

CUSTOMS BULLETIN AND DECISIONS

**Weekly Compilation of
Decisions, Rulings, Regulations, and Notices
Concerning Customs and Related Matters of the
U.S. Customs Service
U.S. Court of Appeals for the Federal Circuit
and
U.S. Court of International Trade**

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This issue contains:

U.S. Customs Service

T.D. 96-1 Through 96-4

General Notices

Proposed Rulemaking

**DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE**

NOTICE

The decisions, rulings, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Logistics Management, Printing and Distribution Branch, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

U.S. Customs Service

Treasury Decisions

(T.D. 96-1)

INTERIM LIST OF RECORDS REQUIRED TO BE MAINTAINED AND PRODUCED PURSUANT TO 19 U.S.C. § 1509(a)(1)(A)

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim "(a)(1)(A) list".

SUMMARY: This document lists records (which includes, but is not limited to, any statement, declaration, document, or electronically generated or machine readable data) required by law or regulation for the entry of the merchandise (whether or not the Customs Service requires its presentation at the time of entry). Publication is required by section 509(a)(1)(A) of the Tariff Act of 1930, as amended by section 615 of Public Law 103-182 (19 U.S.C. 1509(a)(1)(A)). This interim list addresses public comments solicited by the Proposed List which was posted on Customs Electronic Bulletin Board on September 12, 1994 and published in the CUSTOMS BULLETIN on September 21, 1994. The list is being published as an interim listing because the Customs Service is re-engineering its entry and related processes and the list is expected to change as entry requirements are revised.

EFFECTIVE DATE: Since this document merely lists records already required by law or regulation, it is effective on January 3, 1996, the date of publication in the CUSTOMS BULLETIN.

ADDRESSES: Comments should be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue NW (Franklin Court), Washington, DC 20229. Comments may be inspected at the Regulations Branch, Office of Regulations and Rulings, Suite 4000W, 1099 14th Street NW, Washington, DC 20005. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Stuart Seidel, Assistant Commissioner, Office of Regulations and Rulings at (202) 482-6920 or William Inch, Director, Office of Regulatory Audit at (202) 927-1100,

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 509(a)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1509(a)(1)(A)) as amended by 615 of title VI of the North American Free Trade Agreement Implementation Act (generally referred to as the "Customs Modernization Act") requires the maintenance and production of a record if "such record is required by law or regulation for the entry of merchandise (whether or not the Customs Service required its presentation at the time of entry)." Section 509 was further amended by adding a new subsection (e) which requires the Customs Service to identify and publish a list of records or entry information that is required to be maintained and produced under section 509(a)(1)(A) commonly referred to as "the (a)(1)(A) list." On September 12, 1994, the proposed (a)(1)(A) list was placed on the Customs Electronic Bulletin Board for public comment, followed by publication in the September 21, 1994 CUSTOMS BULLETIN. Comments were received from the following organizations or their counsel: the Air Courier Conference of America, National Customs Brokers & Forwarders Association of America, Inc., The United States Association of Importers of Textiles and Apparel, The Joint Industry Group, American Association of Exporters and Importers, U.S. Transportation Coalition, and a group of petroleum and petrochemical companies. In addition comments were received from a Customs broker, a law firm, an express consignment company and its brokerage, and a Customs office. A total of eleven comments were received. However, many of the submissions were from trade groups, or their counsel, representing hundreds of interested parties. A summary of the comments received and Customs response follows:

Comment:

One commenter opined that NAFTA records should be excluded from the (a)(1)(A) list because it would subject record keepers to the additional penalties available under 19 U.S.C. § 1509, and NAFTA exporter's records are already subject to penalties.

Customs Response:

Customs agrees that records required to be kept by U.S. exporters should be excluded from the (a)(1)(A) list (unless the same party is also an importer and is relying upon those records to claim a NAFTA preference on reimportation) since (a)(1)(A) only applies to entry records. However, Customs believes that certain other NAFTA records are entry records. The law requires a person claiming NAFTA preferences to be in possession of a NAFTA Certificate of Origin at the time the preference is claimed. Thus, when NAFTA preferences are claimed at the time of entry, the NAFTA records are entry records and properly fall within the purview of (a)(1)(A). To make this clear, the NAFTA certificate of origin and supporting records required by 19 CFR 181.22 have been specifically added to the list.

Comment:

One commenter suggested that for petroleum and petrochemical products, only the following should be required to be kept for five years: CF 7501 and related documents, purchase orders or contracts (except when made orally), invoice and payment records (including canceled checks, wire transfer evidence, inter company accounts and similar records, bills of lading or charter agreements, freight invoices, import inspection reports, etc, evidence of use (for classification where use controls), TSCA and EPA certifications.

Customs Response:

The record retention period is beyond the scope of the (a)(1)(A) list and will be addressed in a separate regulatory package. As indicated in the **Background** portion, Customs will consider changes in entry record requirements as Customs processes are revised. However, until those requirements are changed, the law requires that all records required for the entry of merchandise be included in the (a)(1)(A) list.

Comment:

One commenter expressed concern that the size of the (a)(1)(A) list will result in the list being a tool to penalize persons during routine audits. The commenter points out that under current practice, the failure to present certain required records results in a denial of a preference. In other cases, the record (19 CFR 10.174, for example) may be required within 60 days of entry, after which it does not appear to be required. In other cases, importation is prohibited without the required record (19 CFR 12.161 fur seal certificate). The commenter suggested that the (a)(1)(A) list be limited to those presently required to be produced, and not routinely the subject of waivers. The commenter suggested that the entry not be accepted without a statement that the required document is in the importer's possession, because without the statement, potential third party record keepers might not be willing to undertake this responsibility since there would be no guarantee that records would be available. The commenter further suggested reducing the maintenance period from five years to not longer than liquidation of the entry.

Customs Response:

In an automated environment, Customs must be able to use a post-entry record demand to ensure that an importer's claims on entry were valid. In order to expedite the release of merchandise, Customs may initially waive production of certain required records and then verify them at a later date. This is especially true in the case of records not affecting admissibility. This fact is recognized in the law, which refers to a record which is required by law or regulation for the entry of the merchandise *whether or not the Customs Service required its presentation at the time of entry*, emphasis added. A record retention period beyond liquidation was clearly contemplated by Congress, because the statute specifically permits reliquidation and denial of claimed preferences if the record is

demand within two years of the original liquidation and is not produced. As pointed out in other comments, Customs is reviewing its entire entry process and the (a)(1)(A) list will be adjusted in the future. With regard to the penalty process, Customs intends to follow the legislative history which states, "[o]nce this listing has been made available and importers have had an opportunity to familiarize themselves with the contents, the Committee expects the person on whom a demand has been made for any of the records under section 509(a)(1)(A) of the Act will furnish them under the 'reasonable time' standard embodied in the law. The Committee also believes that Customs headquarters should exercise tight control over the imposition of record keeping penalties, and until the Customs Service gains some experience in administering this penalty, no such penalty should be issued without prior headquarters review and approval."

Comment:

One commenter was of the opinion that the (a)(1)(A) list should only contain those records required for "entry," which the commenter equates with "admission" or "release" of the merchandise. The commenter further points out that many of the documents on the list are not required for release. The commenter suggests that as electronic textile visas are introduced, importers will not have any visa documentation to produce and the (a)(1)(A) list should reflect that. The commenter also believes it is inappropriate to list documents, such as origin declarations and quota charge statements which are presented at the time of entry and retained by Customs. The commenter also believes that purchase orders and contracts are not required for entry and refers to 19 CFR 141.83 and 141.86, and therefore should be eliminated from the list. The commenter also believes that the manifest description of the goods should be stricken from the list since the carrier, not the importer is responsible for producing this to Customs. Finally, the commenter believes that the broker power of attorney should be eliminated since the record is not, in the commenter's view, required for entry.

Customs Response:

The term "entry" is used in the Customs laws and regulations in two ways. The first refers to a specific document, the "entry" form (such as consumption entry, vessel repair entry, etc); the second to a procedure, "entry of merchandise," "entry and clearance." Customs believes that the (a)(1)(A) list refers to the procedure—that is, records required to complete the entry process. Section 1484 of title 19 of the United States Code (19 U.S.C. 1484) refers to an importer using reasonable care to make entry by filing such information as is necessary to obtain release of the merchandise, and completing the entry by filing such additional information as may be necessary to enable Customs to fix the final appraisement and classification of the merchandise and insure compliance with applicable law. Thus, the scope of the (a)(1)(A) list is broader than contemplated by the commenter. This is supported by the

examples listed in the legislative history which include not only any record required for admissibility, but also the following which are not required for release: a commercial invoice, a packing list, certificate of origin Form A (where a claim for a preference is made), and declarations of a foreign manufacturer. With regard to purchase orders and contracts, Customs notes that while not every importation requires such records for entry, importations covered by sections 12.99, 10.84 and 10.183 of the Customs Regulations do require contracts. Customs has deleted purchase orders from the (a)(1)(A) list, although they must be retained and made available for examination pursuant to other provisions of 19 U.S.C. 1508 and 1509. With regard to the comment that electronic visas may be transmitted to the Customs Service, we note that the visa will still be a record required for entry and thus will have to be listed, but the importer will not be subject to penalties, since the record is transmitted to and retained by Customs, and the penalty provisions do not apply when Customs retains the record.

Comment:

Several commenters recommended that the (a)(1)(A) list be simplified, to eliminate unnecessary material, and suggest Customs review documents which are routinely waived to see if they can be eliminated. One commenter believed that the list was accurate, but far too complex. The commenter suggested a "front end" summary of which documents contain which data elements and that the list be re-structured to simplify it. Finally, several commenters suggested that the list could be clarified by referencing the documents currently required rather than the data elements or information.

Customs Response:

Customs agrees that the list should be rearranged to show which data is routinely provided to Customs on entry forms and has tried to group the records to show which ones are required by all, or most, import transactions. We agree that the list is complex, and lists some records which are not required in most import transactions, but only are required for imports of certain specific merchandise, or in certain situations. We have tried to list those situations and hope to simplify and reduce the list in the future as new procedures and regulations are implemented. The law requires that the (a)(1)(A) list contain not only documents but also data elements and other information required for entry.

Comment:

Several commenters suggested that Customs list the parties responsible for maintaining specific documents. For example, one commenter points out that carriers are responsible for the manifest under regulations issued pursuant to 19 U.S.C. 1321, but should not be responsible for the summary manifest for letters and documents and return shipments since these intangibles are, in the commenter's view exempt from entry under General Notes 13 (d), (e) of the Harmonized Tariff

Schedule of the United States (HTSUS) and § 681c of the Mod Act. The commenter questions the inclusion of the vessel entry form 226 since, in the commenter's view, it does not relate to the "entry of merchandise."

Customs Response:

Whether or not an article is covered by the HTSUS is not determinative of whether the article is "merchandise" within the Tariff Act of 1930. Section 401 (19 U.S.C. 1401) defines "merchandise" as goods, wares, and chattels of every description and includes merchandise the importation of which is prohibited, and monetary instruments. Thus, returned articles and documents are in fact merchandise, albeit exempt from the HTSUS. In fact, 19 U.S.C. 1498 specifically permits the Secretary to promulgate regulations for the declaration and entry of returned merchandise. With regard to the vessel entry form, we note that while it is used to report vessel repairs, it is also used to report the entry of equipment and spare parts and is also referenced in 19 U.S.C. 1498.

Comment:

One commenter suggested that express carriers (operating under part 128, Customs Regulations) be required to keep the manifest, consolidated entry summary or its equivalent and invoices for informal entries, and the manifest, individual entry summaries or their equivalent and invoices for formal entries. The commenter did not believe that individual house airway bills and packing lists should be listed because the airway bill's data elements duplicated the manifest, and the packing lists were rarely used for express consignments. The commenter expressed the view that since express carriers have "a statutory right under 19 U.S.C. 1484 to designate their own brokers to make entry," no power of attorney was needed and it should therefor be eliminated from the (a)(1)(A) list. The commenter suggested that other federal or state agency documents should be listed. The commenter believed that the list should include (for carriers), records relating to entry for immediate transportation pursuant to 19 U.S.C. 1552, transportation and exportation pursuant to 19 U.S.C. 1553 and records relating to instruments of international traffic pursuant to 19 U.S.C. 1322. Several commenters pointed out that Customs Forms 3311, 4455 and Form A are no longer required (see 59 F.R. 25503) and should be removed from the (a)(1)(A) list. One commenter pointed out that since only "an owner or purchaser of the merchandise or, when appropriately designated by the owner, purchaser, or consignee of the merchandise, a person holding a valid license under section 1641" may make formal entry, carriers should not be liable for maintaining records on the (a)(1)(A) list except in limited circumstances.

Customs Response:

Customs agrees that a power of attorney is not required by a broker who is the importer of record, since in that capacity, the broker is the principal and is liable for duties, fees and taxes. However, powers of

attorney, when required by the regulations, are entry records. Customs agrees that the CF 3311 and CF 4455 are no longer required for certain entries pursuant to 19 CFR 10.1(a) and 10.8 and 10.9. However, the CF 3311 and/or CF 4455 remain entry records for certain importations (see revised 19 CFR 7.8(b), 10.1 (h), (I), (j) and 10.66, 10.67, for example. The Origin Form A has been deleted from the (a)(1)(A) list for GSP and CBI importations. Customs also agrees that records required by 19 U.S.C. 1552, 1553 and 1322 are entry records and has added them to the (a)(1)(A) list.

CONCLUSION

Customs has revised the (a)(1)(A) list in accordance with the foregoing and is publishing it at this time as an interim document to allow future modifications as procedures change. The "Background" section has been renamed "General Information" and expanded and clarified. The list will also be published as an Appendix to the revised record keeping regulations when that document is published. Customs intends the importing community to familiarize themselves with the (a)(1)(A) list and expects that a person on whom a demand has been made for any of the entry records will furnish them under the "reasonable time" standard embodied in the law. Although the record keeping penalties are effective upon publication of the list, Customs headquarters will, as recommended in the legislative history, exercise tight control over the imposition of record keeping penalties, and until the Customs Service gains some experience in administering this penalty, Customs officers will not issue such a penalty without prior headquarters review and approval.

Dated: December 21, 1995.

STUART P. SEIDEL,
*Assistant Commissioner,
Office of Regulations and Rulings.*

[Attachment]

INTERIM (a)(1)(A) LIST

LIST OF RECORDS REQUIRED FOR THE ENTRY OF MERCHANDISE

General Information:

Section 508 of the Tariff Act of 1930, as amended (19 U.S.C. 1508), sets forth the general record keeping requirements for Customs-related activities. Section 509 of the Tariff Act of 1930, as amended (19 U.S.C. 1509) sets forth the procedures for the production and examination of those records (which includes, but is not limited to, any statement, dec-

laration, document, or electronically generated or machine readable data).

Section 509(a)(1)(A) of the Tariff Act of 1930, as amended by title VI of Public Law 103-182, commonly referred to as the Customs Modernization Act (19 U.S.C. 1509(a)(1)(A)), requires the production, within a reasonable time after demand by the Customs Service is made (taking into consideration the number, type and age of the item demanded) if "such record is required by law or regulation for the entry of the merchandise (whether or not the Customs Service required its presentation at the time of entry)". Section 509(e) of the Tariff Act of 1930, as amended by Public Law 103-182 (19 U.S.C. 1509(e)) requires the Customs Service to identify and publish a list of the records and entry information that is required to be maintained and produced under subsection (a)(1)(A) of section 509 (19 U.S.C. 1509 (a)(1)(A)). This list is commonly referred to as "**the (a)(1)(A) list.**"

The Customs Service has tried to identify all the presently required entry information or records on the following list. However, as automated programs and new procedures are introduced, these may change. In addition, errors and omissions to the list may be discovered upon further review by Customs officials or the trade. Pursuant to section 509(g), the failure to produce listed records or information upon reasonable demand may result in penalty action or liquidation or reliquidation at a higher rate than entered. A record keeping penalty may not be assessed if the listed information or records are transmitted to and retained by Customs.

Other recordkeeping requirements: *The importing community and Customs officials are reminded that the (a)(1)(A) list only pertains to records or information required for the entry of merchandise. An owner, importer, consignee, importer of record, entry filer, or other party who imports merchandise, files a drawback claim or transports or stores bonded merchandise, any agent of the foregoing, or any person whose activities require them to file a declaration or entry, is **also** required to make, keep and render for examination and inspection records (including, but not limited to, statements, declarations, documents and electronically generated or machine readable data) which pertain to any such activity or the information contained in the records required by the Tariff Act in connection with any such activity; and are normally kept in the ordinary course of business. While these records are not subject to administrative penalties, they are subject to examination and/or summons by Customs officers. Failure to comply could result in the imposition of significant judicially imposed penalties and denial of import privileges.*

The following list does not replace entry requirements, but is merely provided for information and reference. In the case of the list conflicting with regulatory or statutory requirements, the latter will govern.

LIST OF RECORDS AND INFORMATION REQUIRED FOR THE ENTRY OF MERCHANDISE

The following records (which includes, but is not limited to, any statement, declaration, document, or electronically generated or machine readable data) are required by law or regulation for the entry of merchandise and are required to be maintained and produced to Customs upon reasonable demand (whether or not Customs required its presentation at the time of entry). Information may be submitted to Customs at time of entry in a Customs authorized electronic or paper format. Not every entry of merchandise requires all of the following information. Only those records or information applicable to the entry requirements for the merchandise in question will be required/mandatory. The list may be amended as Customs reviews its requirements and continues to implement the Customs Modernization Act. When a record or information is filed with and retained by Customs, the record is not subject to record keeping penalties, although the underlying backup or supporting information from which it is obtained may also be subject to the general record retention regulations and examination or summons pursuant to 19 U.S.C. 1508 and 1509.

(All references, unless otherwise indicated, are to title 19, Code of Federal Regulations, April 1, 1995 Edition, as amended by subsequent Federal Register notices.)

I. General list or records required for most entries. Information shown with an asterisk (*) is usually on the appropriate form and filed with and retained by Customs:

Sec. 141.11-.15	Evidence of right to make entry (airway bill/bill of lading or *carrier certificate, etc.) when goods are imported on a common carrier.
141.19	*Declaration of entry (usually contained on the entry summary or warehouse entry)
141.32	Power of attorney (when required by regulations)
141.54	Consolidated shipments authority to make entry (if this procedure is utilized)
142.3	Packing list (where appropriate)
142.4	Bond information (except if 10.101 or 142.4(c) applies)

Parts 4, 18, 122, 123 *Vessel, Vehicle or Air Manifest (filed by the carrier)

II. The following records or information are required by 141.61 on Customs Form (CF) 3461 or CF 7533 or the regulations cited. Information shown with an asterisk (*) is contained on the appropriate form and/or otherwise filed with and retained by Customs:

Sec. 142.3, .3a	*Entry Number *Entry Type Code *Elected Entry Date *Port Code
142.4	*Bond information
141.61, 142.3a	*Broker/Importer Filer Number

Sec.	
141.61, 142.3	*Ultimate Consignee Name and Number /street address of premises to be delivered
141.61	*Importer of Record Number
	*Country of Origin
141.11	*IT/BL/AWB Number and Code
	*Arrival Date
141.61	*Carrier Code
	*Voyage/Flight/Trip
	*Vessel Code/Name
	*Manufacturer ID Number (for AD/CVD must be actual mfr.)
	*Location of Goods-Code(s)/Name(s)
	*U.S. Port of Unloading
	*General Order Number (only when required by the regulations)
142.6	*Description of Merchandise
142.6	*HTSUSA Number
142.6	*Manifest Quantity
	*Total Value
	*Signature of Applicant

III. In addition to the information listed above, the following records or items of information are required by law and regulation for the entry of merchandise and are presently required to be produced by the importer of record at the time the Customs Form 7501 is filed.

Sec.	
141.61	*Entry Summary Date
141.61	*Entry Date
142.3	*Bond Number, Bond Type Code and Surety code
142.3	*Ultimate Consignee Address
141.61	*Importer of Record Name and Address
141.61	*Exporting Country and Date Exported
	*I.T. (In-bond) Entry Date (for IT Entries only)
	*Mode of Transportation (MOT Code)
141.61	*Importing Carrier Name
141.82	Conveyance Name/Number
	*Foreign Port of Lading
	*Import Date and Line Numbers
	*Reference Number
	*HTSUS Number
141.61	*Identification number for merchandise subject to Anti-dumping or Countervailing duty order (ADA/CVD Case Number)
141.61	*Gross Weight
	*Manifest Quantity
141.61	*Net Quantity in HTSUSA Units
141.61	*Entered Value, Charges, and Relationship
141.61	*Applicable HTSUSA Rate, ADA/CVD Rate, I.R.C. Rate, and/or Visa Number, Duty, I.R. Tax, and Fees (e.g. HMF, MPF, Cotton)
141.61	Non-Dutiable Charges
141.61	*Signature of Declarant, Title, and Date
	*Textile Category Number
141.83, .86	Invoice information which includes-e.g., date, number, merchandise (commercial product) description, quantities, values, unit price, trade terms, part, model, style, marks and numbers, name and address of foreign party responsible for invoicing, kind of currency
	Terms of Sale
	Shipping Quantities
	Shipping Units of Measurements

Sec.	
141.83, .86	Manifest Description of Goods Foreign Trade Zone Designation and Status Designation (if applicable) Indication of Eligibility for Special Access Program (9802/GSP/CBI)
141.89	CF 5523
141.89, et al.	Corrected Commercial Invoice
141.86(e)	Packing List
177.8	*Binding Ruling Identification Number (or a copy of the ruling)
10.102	Duty Free Entry Certificate (9808.00.30009 HTS)
10.108	Lease Statement

IV. Documents/records or information required for entry of special categories of merchandise (The listed documents or information is only required for merchandise entered (or required to be entered) in accordance with the provisions of the sections of 19 CFR (the Customs Regulations) listed). *These are In addition to any documents/records or information required by other agencies in their regulations for the entry of merchandise:*

Sec.	
4.14	CF 226 Information for vessel repairs, parts and equipment
7.8(a)	CF 3229 Origin certificate for insular possessions
7.8(b)	CF 3311 and Shipper's declaration for insular possessions
Part 10	Documents required for entry of articles exported and returned:
10.1-10.6	Foreign shipper's declaration or master's certificate, declaration for free entry by owner, importer or consignee
10.7	Certificate from foreign shipper for reusable containers
10.8	Declaration of person performing alterations or repairs Declaration for non-conforming merchandise
10.9	Declaration of processing
10.24	Declaration by assembler Endorsement by importer
10.31, .35	Documents required for Temporary Importations Under Bond: Information required, Bond or Carnet
10.36	Lists for samples, professional equipment, theatrical effects
	Documents required for Instruments of International Traffic:
10.41	Application, Bond or TIR carnet Note: additional 19 U.S.C. 1508 records: see 10.41b(e)
10.43	Documents required for exempt organizations
10.46	Request from head of agency for 9808.00.10 or 9808.00.20 HTSUS treatment: Documents required for works of art
10.48	Declaration of artist, seller or shipper, curator, etc
10.49, .52	Declaration by institution
10.53	Declaration by importer USFWS Form 3-177, if appropriate
10.59, .63	Documents/ CF 5125/ for withdrawal of ship supplies
10.66, .67	Declarations for articles exported and returned
10.68, .69	Documents for commercial samples, tools, theatrical effects
10.70, .71	Purebred breeding certificate
10.84	Automotive Products certificate
10.90	Master records and metal matrices: detailed statement of cost of production.
10.98	Declarations for copper fluxing material
10.99	Declaration of non-beverage ethyl alcohol, ATF permit
10.101-.102	Stipulation for government shipments and/or certification for government duty-free entries, etc.
10.107	Report for rescue and relief equipment

Sec.	
15 CFR 301	Requirements for entry of scientific and educational apparatus
10.121	Certificate from USIA for visual/auditory materials
10.134	Declaration of actual use (When classification involves actual use)
10.138	End Use Certificate
10.171-	Documents, etc. required for entries of GSP merchandise
10.173, 10.175	GSP Declaration (plus supporting documentation)
10.174	Evidence of direct shipment
10.179	Certificate of importer of crude petroleum
10.180	Certificate of fresh, chilled or frozen beef
10.183	Civil aircraft parts/simulator documentation and certifications
10.191-.198	Documents, etc. required for entries of CBI merchandise
	CBI declaration of origin (plus supporting information)
10.194	Evidence of direct shipment
†[10.306	<i>Evidence of direct shipment for CFTA]</i>
†[10.307	<i>Documents, etc. required for entries under CFTA</i>
	<i>Certificate of origin, CF 353]</i>

†[CFTA provisions are suspended while NAFTA remains in effect. See part 181.]

Sec.	
12.6	European Community cheese affidavit
12.7	HHS permit for milk or cream importation
12.11	Notice of arrival for plant and plant products
12.17	APHIS Permit animal viruses, serums and toxins
12.21	HHS license for viruses, toxins, antitoxins, etc for treatment of man
12.23	Notice of claimed investigational exemption for a new drug
12.26-.31	Necessary permits from APHIS, FWS & foreign government
	certificates when required by the applicable regulation
12.33	Chop list, proforma invoice and release permit from HHS
12.34	Certificate of match inspection and importer's declaration
12.43	Certificate of origin/declarations for goods made by forced labor, etc.
12.61	Shipper's declaration, official certificate for seal and otter skins
12.73 12.80	Motor vehicle declarations
12.85	Boat declarations(CG-5096) and USCG exemption
12.91	FDA form 2877 and required declarations for electronics products
12.99	Declarations for switchblade knives
12.104-.104i	Cultural property declarations, statements and certificates of origin
12.105-.109	Pre-Columbian monumental and architectural sculpture and murals
	Certificate of legal exportation
	Evidence of exemption
12.110-	Pesticides, etc. notice of arrival
12.118-.127	Toxic substances: TSCA statements
12.130	Textiles & textile products
	Single country declaration
	Multiple country declaration
	VISA
12.132	NAFTA textile requirements
54.5	Declaration by importer of use of use of certain metal articles
54.6(a)	Re-Melting Certificate
114	Carnets (serves as entry and bond document where applicable)
115	Container certificate of approval
128	Express consignments
128.21	*Manifests with required information (filed by carrier)
132.23	Acknowledgment of delivery for mailed items subject to quota
133.21(b)(6)	Consent from trademark or trade name holder to import otherwise restricted goods
134.25, .36	Certificate of marking; notice to repacker
141.88	Computed value information

Sec.	
141.89	Additional invoice information required for certain classes of merchandise, including, but not limited to: <i>Textile Entries:</i> Quota charge Statement, if applicable including Style Number, Article Number and Product <i>Steel Entries</i> Ordering specifications, including but not limited to, all applicable industry standards and mill certificates, including but not limited to, chemical composition.
143.13	Documents required for appraisement entries Bills, statements of costs of production Value declaration
143.23	Informal entry: commercial invoice plus declaration
144.12	Warehouse entry information
145.11	Customs Declaration for Mail, Invoice
145.12	Mail entry information (CF 3419 is completed by Customs but formal entry may be required.)
148	Supporting documents for personal importations
151 subpart B	Scale Weight
151 subpart B	Sugar imports sampling/lab information (Chemical Analysis)
151 subpart C	Petroleum imports sampling/lab information
	Out turn Report 24. to 25.—Reserved
Sec.	
151 subpart E	Wool and Hair invoice information, additional documents
151 subpart F	Cotton invoice information, additional documents
181.22	NAFTA Certificate of origin and supporting records
19 USC 1356k	<i>Coffee Form O (currently suspended)</i>

Other Federal and State Agency Documents

State and Local Government Records

Other Federal Agency Records (See 19 CFR Part 12, 19 U.S.C. 1484, 1499)

Licenses, Authorizations, Permits

Foreign Trade Zones

Sec.	
146.32	Supporting documents to CF 214

19 CFR Part 162

(T.D. 96-2)

RIN 1515-AB62

SEIZURE OF MERCHANDISE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: In this document, Customs is amending its regulations in response to enactment of the Customs Modernization Act ("The Mod Act"). Among its other provisions, the Mod Act amended Section 596(c) of the Tariff Act of 1930 (19 U.S.C. 1595a(c)) to clarify and codify Cus-

toms authority to seize and forfeit merchandise introduced or attempted to be introduced into the United States contrary to law. The Mod Act distinguishes between circumstances under which seizure of such merchandise is mandatory and those in which it is permissive. The amendment follows the legislation and specifies the circumstances under which the mandatory and permissive seizures may take place. The amendment also contains provisions for the detention of merchandise and the remission of articles subject to seizure and forfeiture.

EFFECTIVE DATE: January 29, 1996.

FOR FURTHER INFORMATION CONTACT: Todd Schneider, Penalties Branch (202) 482-6950.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, the President signed the North American Free Trade Agreement Implementation Act (Public Law 103-182). The Customs Modernization portion of this Act (Title VI), popularly known as the Customs Modernization Act, or "the Mod Act" became effective when it was signed. Section 624 of Title VI amended § 596(c) of the Tariff Act of 1930 (19 U.S.C. 1595a(c)) to codify and clarify the circumstances under which merchandise may be seized and forfeited by Customs.

On May 3, 1995, Customs published a Notice of Proposed Rulemaking in the Federal Register (60 FR 21788), which proposed amending the Customs Regulations to reflect these statutory changes. Because no comments were received in response to the Notice of Proposed Rulemaking, Customs is now amending its regulations as proposed.

The Mod Act amendments to § 1595a(c) provide that merchandise which is introduced or attempted to be introduced into the United States contrary to law shall be treated in two different manners depending upon the circumstances of the introduction or attempted introduction. In instances where the merchandise is stolen, smuggled, or clandestinely imported or introduced or is a controlled substance or contraband article, seizure is mandatory.

Paragraph (a) of the amendment addresses conditions where seizure is mandatory.

Paragraph (b) of the amendment covers those situations in which seizure is permissive. Seizure is permissive in instances where the merchandise is subject to health, safety or conservation restrictions which have not been complied with; when licenses, permits or other authorizations of a U.S. Government agency are required but do not accompany the merchandise; when copyright, trademark, or trade name violations are involved; when trade dress merchandise involved is in violation of a court order citing § 43 of the Act of July 5, 1946 (15 U.S.C. 1125); and when the merchandise is marked intentionally in violation of § 304, Tariff Act of 1930 (19 U.S.C. 1304). The legislation also provides that merchandise may be seized if it is merchandise for which the

importer has received written notices that previous importations of identical merchandise from the same supplier were found to have been marked in violation of § 304, Tariff Act of 1930 (19 U.S.C. 1304).

Paragraph (c) of the amendment provides instructions on procedures which Customs will follow in resolving questions which result from seizures which have been made under § 1595a(c).

Paragraph (d) of the amendment contains language specifying that merchandise which is misclassified or incorrectly valued, where there is no issue of admissibility, will be subject to seizure only under § 1592.

The Mod Act also provides that merchandise which is subject to quantitative restrictions requiring a visa, permit, license or other similar document from the United States Government or a foreign government or issuing authority pursuant to a bilateral or multilateral agreement shall be subject to detention until the appropriate visa, license, permit or similar document or stamp is presented to Customs. However, if the visa, license, permit, or similar document or stamp is counterfeit as presented, the merchandise may be seized. This provision is contained in paragraph (e) of the amendment.

REGULATORY FLEXIBILITY ACT

Insofar as the regulations closely follow legislative direction, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

EXECUTIVE ORDER 12866

This amendment does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

DRAFTING INFORMATION

The principal author of this document was Peter T. Lynch, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

LIST OF SUBJECTS

19 CFR Part 162

Customs duties and inspection, Law enforcement, Seizures and forfeitures.

AMENDMENT

Section 162, Customs Regulations (19 CFR Part 162) is amended as set forth below:

PART 162—RECORDKEEPING, INSPECTION, SEARCH, AND SEIZURE

1. The general authority citation for Part 162 is revised and a new specific cite for § 162.23 is added to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624.

* * * * * * *

Section 162.23 also issued under 19 U.S.C. 1595a(c).

* * * * * * *

2. In Part 162, a new section 162.23 is added to read as follows:

§ 162.23 Seizure under § 596(c), Tariff Act of 1930, as amended (19 U.S.C. 1595a(c)).

(a) *Mandatory seizures.* The following, if introduced or attempted to be introduced into the United States contrary to law, shall be seized pursuant to § 596(c), Tariff Act of 1930, as amended (19 U.S.C. 1595a(c)):

(1) Merchandise that is stolen, smuggled, or clandestinely imported or introduced;

(2) A controlled substance, as defined in the Controlled Substance Act (21 U.S.C. 801 *et seq.*), not imported in accordance with law; or

(3) A contraband article, as defined in § 1 of the Act of August 9, 1939 (49 U.S.C. 80302).

(b) *Permissive seizures.* The following, if introduced or attempted to be introduced into the United States contrary to law, may be seized pursuant to § 596(c), Tariff Act of 1930, as amended (19 U.S.C. 1595a(c)):

(1) Merchandise the importation or entry of which is subject to any restriction or prohibition imposed by law relating to health, safety, or conservation, and which is not in compliance with the applicable rule, regulation or statute;

(2) Merchandise the importation or entry of which requires a license, permit or other authorization of a United States Government agency, and which is not accompanied by such license, permit or authorization;

(3) Merchandise or packaging in which copyright, trademark or trade name protection violations are involved (including, but not limited to, a violation of §§ 42, 43 or 45 of the Act of July 5, 1946 (15 U.S.C. 1124, 1125 or 1127), §§ 506 or 509 of title 17, United States Code, or §§ 2318 or 2320 of title 18, United States Code);

(4) Trade dress merchandise involved in the violation of a court order citing § 43 of the Act of July 5, 1946 (15 U.S.C. 1125);

(5) Merchandise marked intentionally in violation of 19 U.S.C. 1304;

(6) Merchandise for which the importer has received written notices that previous importations of identical merchandise from the same supplier were found to have been in violation of 19 U.S.C. 1304; or

(7) Merchandise subject to quantitative restrictions, found to bear a counterfeit visa, permit, license, or similar document, or stamp from the United States or from a foreign government or issuing authority pursuant to a multilateral or bilateral agreement (but see paragraph (e), of this section).

(c) *Resolution of seizure under § 1595a(c).* When merchandise is either required or authorized to be seized under this section, the forfeiture incurred may be remitted in accord with 19 U.S.C. 1618, to include as a possible option the exportation of the merchandise under such conditions as Customs shall impose, unless its release would adversely affect health, safety, or conservation, or be in contravention of a bilateral or multilateral agreement or treaty.

(d) *Seizure under 19 U.S.C. 1592.* If merchandise is imported, introduced or attempted to be introduced contrary to a provision of law governing its classification or value, and there is no issue of admissibility, such merchandise shall not be seized pursuant to 19 U.S.C. 1595a(c). Any seizure of such merchandise shall be in accordance with § 1592 (see § 162.75 of this chapter).

(e) *Detention only.* Merchandise subject to quantitative restrictions requiring a visa, permit, license, or other similar document, or stamp from the United States Government or from a foreign government or issuing authority pursuant to a bilateral or multilateral agreement, shall be subject to detention in accordance with 19 U.S.C. 1499, unless the appropriate visa, permit, license, or similar document, or stamp is presented to Customs (but see paragraph (b)(7), above, for instances when seizure may occur).

GEORGE J. WEISE,
Commissioner of Customs.

Approved: November 29, 1995.

DENNIS M. O'CONNELL,

Acting Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, December 28, 1995 (60 FR 67057)]

19 CFR Part 101

(T.D. 96-3)

CUSTOMS SERVICE FIELD ORGANIZATION— SIOUX FALLS, SOUTH DAKOTA

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations pertaining to the field organization of Customs by establishing Sioux Falls, South Dakota, as a port of entry. The change is made as part of Customs continuing efforts to obtain more efficient use of its personnel, facilities, and resources and to provide better service to carriers, importers, and the general public.

EFFECTIVE DATE: January 29, 1996.

FOR FURTHER INFORMATION CONTACT: Bob Jones, Office of Field Operations (202-927-0456).

SUPPLEMENTARY INFORMATION:

BACKGROUND

As part of its continuing efforts to obtain more efficient use of its personnel, facilities, and resources and to provide better service to carriers, importers, and the general public, Customs published a document in the Federal Register (60 FR 52347) on October 6, 1995, proposing to amend § 101.3 of the Customs Regulations (19 CFR 101.3) by establishing a port of entry at Sioux Falls, South Dakota encompassing the counties of Minnehaha and Lincoln in the State of South Dakota.

As the proposal stated, South Dakota presently does not have a port of entry and the Governor of the State of South Dakota requested the establishment of the port of entry in the state. In support of the establishment of the port at Sioux Falls, it was stated to Customs that the port would yield significant immediate and future economic benefits for the State of South Dakota, including the retention and expansion of jobs, the more efficient transportation of imported and exported merchandise, the opportunity for the establishment of a foreign trade zone, the expanded development of infrastructure within the proposed port area, an enhanced business competitiveness for existing enterprises and the opportunity to encourage new businesses to locate within South Dakota.

As further stated in the proposal, the Customs office within the port of entry would be located at the Joe Foss Field airport in Sioux Falls, which is the largest urban area within the State of South Dakota. It has been represented to Customs that the cost to the Federal Government would only involve the services of one full-time Customs official and therefore would be minimal compared to the significant benefits that port of entry status would impart to the South Dakota business community.

Sioux Falls is located at the junction of two major state interstate highways (Interstate 90 and Interstate 29), is serviced by a major national freight railway company, and is serviced at the Joe Foss Field airport by national passenger and cargo airlines, express air freight services and commuter airlines.

The proposal set forth representations to Customs that the greater metropolitan areas of Sioux Falls has a population of 139,236 based on 1990 census figures and that a population of well over 300,000 exists within a 70-mile radius of Sioux Falls. It was projected that existing businesses would file between 2,709 and 3,253 import entries within the proposed port of entry in the years 1996 through 1998, with no single company accounting for more than half of the projected entries. It was further stated in the request for a port of entry that the Sioux Falls Regional Airport Authority is committed to making optimal use of

electronic data transfer capability to permit integration with the Customs Automated Commercial System for processing entries. Regarding the Joe Foss Field airport, it was stated the airport has exceptional cargo and passenger facilities, that passenger areas can be secured to accommodate international arrival passenger clearance, and that there are several warehouse facilities in close proximity to the airport that are suitable for the secure storage of cargo pending inspection and release by Customs. Further, the Sioux Falls Regional Airport Authority committed to providing certain space and equipment to Customs.

Based on the information provided to Customs, the proposal set forth Customs belief that Sioux Falls meets the current minimum criteria for port of entry designation set forth in T.D. 82-37 (47 FR 10137), as revised by T.D. 86-14 (51 FR 4559) and by T.D. 87-65 (52 FR 16328).

DETERMINATION

No comments were received in response to the proposal. After further review and consideration by Customs, it has been determined to establish Sioux Falls as a port of entry with port limits as described below. Section 101.3 is amended accordingly. It is noted, however, that because the representations set forth in the proposal rely on potential, rather than actual, workload figures, Customs will in 3 years review the actual workload generated within the port of Sioux Falls to evaluate whether Sioux Falls may retain port of entry status. If that review indicates that the actual workload is below the standard set forth in T.D. 82-37, as revised, procedures will be instituted to revoke port of entry status. Of course, if port of entry status is revoked, the City of Sioux Falls will have the opportunity to apply for user fee airport status under 19 U.S.C. 58b.

LIMITS OF PORT OF ENTRY

The geographical limits of the port of entry of Sioux Falls are as follows:

All of Minnehaha and Lincoln Counties in the State of South Dakota.

REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this document was issued for public comment, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Agency organization matters such as this are exempt from consideration under Executive Order 12866.

LIST OF SUBJECTS IN 19 CFR PART 101

Customs duties and inspection, Harbors, Organization and functions (Government agencies), Seals and insignia, Vessels.

AMENDMENTS TO THE REGULATIONS

For the reason set forth in the preamble, part 101 of the Customs Regulations is amended as set forth below:

PART 101—GENERAL PROVISIONS

1. The general authority citation for part 101 and specific authority citation for § 101.3 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1623, 1624.

Sections 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

2. Section 101.3(b)(1) is amended by adding the following entry in appropriate alphabetical order :

§ 101.3 Customs service ports and ports of entry.

(b) *List of Ports of Entry and Service Ports.* * * *

(1) *Customs ports of entry.* * * *

Ports of entry	Limits of port
* * * * *	* * * * *
South Dakota	
Sioux Falls	T.D. 96-3
* * * * *	* * * * *

GEORGE J. WEISE,
Commissioner of Customs.

Approved: December 1, 1995.

DENNIS M. O'CONNELL,

Acting Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, December 28, 1995 (60 FR 67056)]

19 CFR Part 101

(T.D. 96-4)

NAME CHANGE FOR
CONSOLIDATED PORT OF PHILADELPHIA

AGENCY: U. S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to change the name of the Consolidated Port of Philadelphia to the Consol-

idated Port of the Delaware River and Bay, and to identify the participating ports within the consolidated port. This change is being made to more clearly reflect that the port encompasses Wilmington, Delaware and other cities and territory as well as Philadelphia, Pennsylvania.

EFFECTIVE DATE: January 29, 1996.

FOR FURTHER INFORMATION CONTACT: A. Donald Gilman, Office of Congressional and Public Affairs, (202) 927-1169.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 101.3, Customs Regulations (19 CFR 101.3), lists as one of Customs ports of entry Philadelphia-Chester, PA and Wilmington, DE. This port includes the named cities and includes Camden, Gloucester City and Salem, New Jersey and territory described in T. D. 84-195. The port of entry is popularly known as the Consolidated Port of Philadelphia.

After a meeting with trade community representatives from both Wilmington, Delaware and Philadelphia, Pennsylvania, Customs proposed in a document published in the Federal Register (60 FR 47505) on September 13, 1995, that the name of the consolidated port should be changed to the Consolidated Port of the Delaware River and Bay. The name change would reflect that the port encompasses Wilmington, Delaware and other cities and territory as well as Philadelphia, Pennsylvania. As noted in the proposal, the Wilmington, Delaware trade community strongly favors such a name change, and the Philadelphia trade community has not expressed any objection to that suggestion.

COMMENTS RECEIVED

A total of seven entities responded to the proposal. All seven were in favor of the name change.

CONCLUSION

After review of the comments and further consideration, Customs has determined to proceed with changing the name of the port.

Accordingly, Customs is amending section 101.3, Customs Regulations (19 CFR 101.3) to change the name of the port of Philadelphia-Chester, PA and Wilmington, DE, popularly known as the Consolidated Port of Philadelphia, to the Consolidated Port of the Delaware River and Bay, and to identify the participating ports within the consolidated port.

TERRITORY OF THE CONSOLIDATED PORT

The geographical limits of the consolidated port are as follows:

The ports of Philadelphia, Pennsylvania (comprising the territory within the corporate limits of Philadelphia, Pennsylvania, and Camden, Gloucester City, and Salem, New Jersey; the territory within the limits of the Boroughs of Brooklawn, National Park, and

Paulsboro, and the Townships of West Deptford and Greenwich, all in New Jersey; the Borough of Folcroft and the Townships of Darby and Tinicum, all in Pennsylvania; and the territory between the Delaware River and U. S. Highway No. 13, in Bucks County, Pennsylvania, from the corporate limits of Philadelphia to and including Morrisville, Pennsylvania; and the territory between the Delaware River and U. S. Highway No. 130 and U. S. Highway No. 206, in Camden, Burlington, and Mercer Counties, New Jersey, from the corporate limits of Camden, New Jersey, to and including Trenton, New Jersey; Chester, Pennsylvania (comprising the territory within the corporate limits of Chester, Pennsylvania; the territory within the limits of the Boroughs of Marcus Hook, Trainer, Upland, Parkside, and Eddystone, and the Townships of Lower Chichester and Ridley, all in Pennsylvania; and the territory extending along the Pennsylvania side of the Delaware River from Darby Creek to the Delaware State line, a distance of approximately 10 miles); and Wilmington, Delaware (comprising the territory within the corporate limits of Wilmington, Delaware; the territory within the limits of New Castle, Newport, and Claymont, Delaware; the territory within the limits of Carneys Point and Deep Water Point, New Jersey; and the territory lying between U. S. Highway No. 13 and the Delaware River, from the corporate limits of Wilmington to the Chesapeake and Delaware Canal, Delaware.)

REGULATORY FLEXIBILITY ACT

Although this document was issued for public comment, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Accordingly, the document is not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604.

EXECUTIVE ORDER 12866

Agency organization matters such as this are exempt from Executive Order 12866.

DRAFTING INFORMATION

The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other offices participated in its development.

LIST OF SUBJECTS IN PART 101

Customs duties and inspection, Harbors, Organization and functions (Government agencies), Seals and insignia, Vessels.

AMENDMENTS TO THE REGULATIONS

For the reasons set forth in the preamble, part 101 of the Customs Regulations (19 CFR 101) is amended as set forth below.

PART 101—GENERAL PROVISIONS

1. The general authority citation for Part 101 and the relevant specific authority citation continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1623, 1624.

Sections 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

2. Section 101.3(b)(1) is amended by removing the entry for Philadelphia-Chester, PA and Wilmington, DE under the states of Delaware, New Jersey, and Pennsylvania and adding in appropriate alphabetical order under those states the following entries:

§ 101.3 Customs service ports and ports of entry.

(b) *List of Ports of Entry and Service Ports.* * * *

(1) *Customs ports of entry.* * * *

Ports of entry	Limits of port
Delaware	
Wilmington	Included in the Consolidated Port of the Delaware River and Bay described in T.D. 96-4.
New Jersey	
Camden, Gloucester City, and Salem	Included in the Consolidated Port of the Delaware River and Bay described in T.D. 96-4.
Pennsylvania	
Chester	Included in the Consolidated Port of the Delaware River and Bay described in T.D. 96-4.
Philadelphia	Included in the Consolidated Port of the Delaware River and Bay described in T. D. 96-4.

GEORGE J. WEISE,
Commissioner of Customs.

Approved: December 13, 1995.

DENNIS M. O'CONNELL,

Acting Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, December 28, 1995 (60 FR 67055)]

THE UNIVERSITY OF CHICAGO

PHILOSOPHY DEPARTMENT

1950-1951

PHILOSOPHY 101

PHILOSOPHY 102

PHILOSOPHY 103

PHILOSOPHY 104

PHILOSOPHY 105

PHILOSOPHY 106

PHILOSOPHY 107

PHILOSOPHY 108

PHILOSOPHY 109

PHILOSOPHY 110

PHILOSOPHY 111

PHILOSOPHY 112

PHILOSOPHY 113

PHILOSOPHY 114

PHILOSOPHY 115

PHILOSOPHY 116

PHILOSOPHY 117

PHILOSOPHY 118

U.S. Customs Service

General Notices

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, December 20, 1995.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
*Assistant Commissioner,
Office of Regulations and Rulings.*

PROPOSED REVOCATION OF RULING LETTER RELATING TO TARIFF CLASSIFICATION OF PLASTIC BATTERY HOUSINGS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling relating to the tariff classification of plastic battery housings. These are rectangular shaped housings for alkaline batteries containing one positive and one negative contact. Customs invites comments on the correctness of the proposed revocation.

DATE: Comments must be received on or before February 2, 1996.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Tariff Classification Appeals Division, 1301 Constitution Avenue, N.W. (Franklin Court), Washington, DC 20229. Submitted

comments may be inspected at the Tariff Classification Appeals Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th. Street, N.W., Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Tariff Classification Appeals Division (202) 482-7030.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling relating to the tariff classification of plastic battery housings. Customs invites comments on the correctness of the proposed revocation.

In NY 810315, dated May 17, 1995, plastic battery housings, described as an emergency power source for cellular telephones, were held to be classifiable as parts of primary cells and primary batteries, in subheading 8506.90.00, Harmonized Tariff Schedule of the United States (HTSUS). This ruling was based on the fact the housings are integral, constituent and component parts necessary to the completion of primary cell batteries NY 810315 is set forth as "Attachment A" to this document.

It is now Customs position that because these plastic battery housings contain one positive contact and one negative contact that connect multiple "AA" batteries, they are electrical apparatus for making connections to or in electrical circuits.

Customs intends to revoke NY 810315 to reflect the proper classification of plastic battery housings with positive and negative contacts under subheading 8536.90.00, HTSUS, as other electrical apparatus for making connections to or in electrical circuits, for a voltage not exceeding 1,000 V. Before taking this action, we will give consideration to any written comments timely received. Proposed HQ 958380 revoking NY 810315 is set forth as "Attachment B" to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: December 15, 1995.

MARVIN M. AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,
New York, NY, May 17, 1995.

CLA-2-85:S:N:N1:112 810315

Category: Classification

Tariff No. 8506.90.0000

MR. RICHARD MILLER
RECOTON CORPORATION
2950 Lake Emma Road
Lake Mary, FL 32746

Re: The tariff classification of a plastic battery housing from Taiwan.

DEAR MR. MILLER:

In your letter dated April 24, 1995 you requested a tariff classification ruling.

The plastic battery housing, which you describe as a cellular telephone emergency power source (Part Number CA911), is a rectangular shaped housing or six "AA" alkaline batteries.

The bottom of the housing contains one negative and one positive contact. You suggest that subheading 8507.90.8000, HTS, the provision for parts of other electric storage batteries, may be applicable. Alkaline batteries are considered primary cell batteries rather than electric storage batteries, and parts of such batteries are specifically provided for elsewhere in the tariff schedule.

The applicable subheading for the plastic battery housing will be 8506.90.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for parts of primary cells and primary batteries. The rate of duty will 4.8 percent *ad valorem*.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:TC:MM 958380 JAS

Category: Classification

Tariff No. 8536.90.00

MR. RICHARD MILLER
RECOTON CORPORATION
2950 Lake Emma Road
Lake Mary, FL 32746

Re: NY 810315 Revoked; plastic battery housing for alkaline batteries; emergency power source for cellular telephones; plastic housings with positive and negative contacts; electrical apparatus for making connections to or in electrical circuits; Section XVI, Note 2.

DEAR MR. MILLER:

In NY 810315, dated May 17, 1995, the Area Director of Customs, New York Seaport, advised you that plastic battery housings for alkaline batteries were classifiable in subheading 8506.90.00, Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered this classification and determined that it is incorrect.

Facts:

The plastic battery housings were described in NY 810315 as a cellular telephone emergency power source. They are rectangular shaped plastic housings for six "AA" alkaline batteries. The bottom of the housing contains one positive and one negative contact. The metal contacts make connections in an electrical circuit. These housings with batteries become battery cartridges.

The provisions under consideration are as follows:

8536	Electrical apparatus for switching or protecting electrical circuits, or for: making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes), for a voltage not exceeding 1,000 V:
8536.90.00	Other apparatus * * * 4.8 percent
8506	Primary cells and primary batteries; parts thereof:
8506.90.00	Parts * * * 4.8 percent

Issue:

Whether plastic battery housings with positive and negative contacts are goods of heading 8536.

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The **Harmonized Commodity Description And Coding System Explanatory Notes (ENs)** constitute the official interpretation of the Harmonized System. While not legally binding, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the notes should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Subject to certain exceptions that are not relevant here, goods that are identifiable as parts of machines or apparatus of Chapter 84 or Chapter 85 are classifiable in accordance with Section XVI, Note 2. **Nidec Corporation v. United States**, 861 F. Supp. 136, *aff'd*, 68 F.3d 1333 (1995). Parts which are goods included in any of the headings of Chapters 84 and 85 are in all cases to be classified in their respective headings. See Note 2(a). Other parts, if suitable for use solely or principally with a particular machine, or with a number of machines of the same heading, are to be classified with the machines of that kind. See Note 2(b).

Relevant ENs at p. 1390 under (III) **APPARATUS FOR MAKING CONNECTIONS TO OR IN ELECTRICAL CIRCUITS** state this apparatus of heading 85.36 is used to connect together the various parts of an electric circuit. It includes plugs, sockets and other contacts for connecting a movable lead or apparatus to an installation which is usually fixed, as well as other connectors, terminals, terminal strips, etc. This latter group includes small squares of insulating material fitted with electrical connectors (dominoes), and terminals which are metal parts intended for the reception of conductors. In this case, the positive and negative contacts are passive elements which, together with the batteries which are active elements, are interconnecting parts of a circuit that permits power from the batteries to flow to the cellular telephone. The plastic battery housings, as described, meet the description in the cited ENs and are goods included in heading 8536 for purposes of Section XVI, Note 2(a).

Holding:

Under the authority of GRI 1, the plastic battery housings with positive and negative contacts, are provided for in heading 8536. They are classifiable in subheading 8536.90.00, HTSUS.

NY 810315, dated May 17, 1995, is revoked.

JOHN DURANT,

Director,

Tariff Classification Appeals Division.

**PROPOSED REVOCATION OF RULING LETTERS RELATING TO
TARIFF CLASSIFICATION OF KEYBOARD/PANEL SWITCHES,
ELASTOMERS AND SWITCH ASSEMBLIES FOR TELEPHONES**

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letters.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke four rulings relating to the tariff classification of keyboard/panel switches, elastomers and switch assemblies for telephones. These articles are used to make electrical connections with the printed circuit boards in mobile telephone systems to allow calls to be made. Customs invites comments on the correctness of the proposed revocations.

DATE: Comments must be received on or before February 2, 1996.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Tariff Classification Appeals Division, 1301 Constitution Avenue, N.W. (Franklin Court), Washington, DC 20229. Submitted comments may be inspected at the Tariff Classification Appeals Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th. Street, N.W., Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Tariff Classification Appeals Division (202) 482-7030.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke four rulings relating to the tariff classification of keyboard/panel switches, elastomers and switch assemblies for telephones. Customs invites comments on the correctness of the proposed revocation.

In HQ 087362, dated February 19, 1991, keyboard/panel switches for cellular mobile telephones were held to be classifiable as parts suitable for use solely or principally with the apparatus of heading 8525, in subheading 8529.90.50, Harmonized Tariff Schedule of the United States (HTSUS). In NY 863577, dated June 20, 1991, molded silicone rubber pads called elastomers were held to be classifiable as parts for telephone

sets, in subheading 8517.90.30, HTSUS. This decision was affirmed in *HQ* 089938, dated March 11, 1992. In *HQ* 088964, dated July 23, 1991, switch assemblies for multiline telephone sets were held to be classifiable as parts of electrical apparatus for line telephony, telephone sets, in subheading 8517.90.30, HTSUS.

These rulings were based on the requirement of Section XVI, Note 2(b), HTSUS, that the keyboard/panel switches, elastomers and switch assemblies were classifiable with the apparatus with which they were solely or principally used. *HQ* 087362 is set forth as "Attachment A" to this document *NY* 863577 is set forth as "Attachment B" to this document *HQ* 089938 is set forth as "Attachment C" to this document. *HQ* 088964 is set forth as "Attachment D" to this document.

It is now Customs position that notwithstanding the keyboard/ panel switches, elastomers and switch assemblies may be parts of other apparatus, they are goods included in heading 8537, as other bases equipped with two or more apparatus of headings 8535 or 8536, for electric control or distribution of electricity, in accordance with Section XVI, Note 2(a), HTSUS.

Customs intends to revoke *HQ* 087362, *NY* 863577, *HQ* 089938 and *HQ* 088964 to reflect the proper classification of the merchandise in subheading 8537.10.90, HTSUS. Before taking this action, we will give consideration to any written comments timely received. Proposed *HQ* 958709 revoking *HQ* 087362 is set forth as "Attachment E" to this document. Proposed *HQ* 958711 revoking *NY* 863577 and *HQ* 089938 is set forth as "Attachment F" to this document. Proposed *HQ* 958708 revoking *HQ* 088964 is set forth as "Attachment G" to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: December 13, 1995.

MARVIN M. AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,

Washington, DC, February 19, 1991.

CLA-2 CO:R:C:G 087362 JAS

Category: Classification

Tariff No. 8529.90.50

MR. GEORGE KLEINFELD

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

1615 L Street, N.W.

Washington, DC 20036-5694

Re: Keyboard for cellular mobile telephone; Section XVI, Note 2(b); Subheading 8525.20.60; Subheading 8529.90.50; Section XVI 2(a); Heading 8537; Explanatory Note 85.37; switchgear assemblies; switchboard; *United States v. General Electric*; *United States v. Rembrandt Electronics*; *Kyocera International, Inc., v. United States*; H. Rep. No. 100-576; Cellular mobile telephones and subassemblies from Japan: final results of antidumping duty administrative review (A-588-405).

DEAR MR. KLEINFELD:

Your letter of May 11, 1990, requesting a tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), has been referred to this office for reply.

Facts:

The article in question is a keyboard assembly comprised of 20 push button type switches, 14 pin type connectors, and 11 metal contacts which all are affixed to a printed circuit board. The article is inserted into the logic board of a cellular mobile telephone (CMT). When a key on the CMT dialpad is depressed the keyboard diverts an electrical signal along a certain path so that the logic circuit board assembly recognizes the path (i.e., key typed). The keyboard's function enables the user to make a telephone call or avail themselves of any of the other functions of the CMT.

Issue:

Whether the article in question is properly classifiable within subheading 8537.10.00, HTSUSA, which provides for "[b]oards, panels (including numerical control panels), consoles desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity * * * [f]or a voltage not exceeding 1,000 V"; or classifiable within subheading 8529.90.50 which provides for other parts suitable for use solely or principally with the apparatus of heading 8525 (i.e., CMTs).

Law and Analysis:

Section XVI states that parts if suitable for use solely or principally with a particular kind of machine are to be classified with that machine. Section Note 2(b). The keyboard at issue is a part suitable for use solely or principally with a CMT. CMTs are provided for within subheading 8525.20.60, HTSUSA, which provides for other transmission apparatus for radiotelephony incorporating reception apparatus. However, parts of the articles of heading 8525, HTSUSA, are provided for within heading 8529, HTSUSA. More specifically, the keyboard at issue is provided for within subheading 8529.90.50, HTSUSA.

Section XVI additionally states that parts which are goods included in any of the headings of chapters 84 and 85 are in all cases to be classified in their respective headings. Section Note 2(a). It is asserted that the keyboard in this case is classifiable as an "other base", equipped with two or more apparatus of heading 8536, for electric control or the distribution of electricity, and thus requires the application of the above section note. We disagree with this assertion and do not find section note 2(a) applicable in this instance.

Heading 8537, HTSUSA, provides for "[b]oards, panels (including numerical control panels), consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity * * * other than switching apparatus of heading 8517." The subject keyboard is a printed circuit board assembly which is inserted into the logic board of a CMT. When the user depresses a key on the keypad, the keyboard diverts an electrical signal along a path so that the logic board of the CMT recognizes the key typed. This function enables the user to make telephone calls

or use other functions on the key pad. This type of device is not described by the terms of heading 8537, and thus is not classifiable therein.

The Explanatory Notes (ENs) to heading 8537 state that the merchandise of this heading consists of an assembly of apparatus of the kind referred to in the two preceding headings (e.g. switches and fuses) on a board, panel, console, etc., or mounted in a cabinet, desk, etc. In addition, the ENs state that the goods of this heading vary from small switchboards with only a few switches, fuses etc. (e.g., for lighting installations) to complex control panels for machine tools, rolling mills, power stations, radio stations etc., including assemblies of several of the articles cited in the text of this heading. It is additionally claimed that the keyboard at issue is properly classifiable as "switchgear assemblies and switchboards for a voltage not exceeding 1,000 V."

A "switchgear assembly" is described as "assembled equipment (indoor or outdoor) including, but not limited to, one or more of the following: switches, interrupting, control, instrumentation, metering, protective and regulating devices, together with their supporting structures, enclosures, conductors, electric interconnections, and accessories. *IEEE Standard Dictionary of Electrical and Electronic Terms (IEEE)*, second ed. p. 695 (1977). The keyboard does not satisfy this description. It does not contain any type of interrupting, control, instrumentation, metering, protective or regulating devices.

A "switchboard" is described by the *IEEE* as:

"(1) (electric power systems). A large single panel, frame or assembly of panels, on which are mounted, on the face or back or both, switches, overcurrent and other protective devices, buses, and usually instruments."

"(2) (power switchgear). A type of switchgear assembly that consists of one or more panels with electric devices mounted thereon, and associated framework."

"(3) (transmission and distribution). When referred to in connection with supply of electricity, a large single panel, frame or assembly of panels, on which are mounted (on the face, or back, or both), switches, fuses, buses and usually instruments." *IEEE* at 694-95.

A keyboard used within a CMT to divert electrical signals along a certain path so that the logic circuit board assembly recognizes the key depressed does not embody the type of article described as "switchgear assemblies" or a "switchboard".

In *United States v. General Electric Company (General Electric)*, 441 F.2d 1186, 58 CCPA, C.A.D. 1021 (1971), the court of Customs and Patent Appeals (CCPA) addressed the application of item 685.90, Tariff schedules of the United States (TSUS). Item 685.90 is the predecessor provision of heading 8537, HTSUSA. The Court considered the applicability of General Interpretative Rule 10(ij) which provides that an article cannot be classified as a "part" if there is a specific provision for the article. The CCPA specifically rejected the argument that the provision of item 685.90, TSUS, for "other electrical apparatus for making or breaking electrical circuits" must prevail over the provision for parts of radio reception apparatus within item 685.22, TSUS. The Court held that the Customs Court was correct in its holding that imported jacks, used in low current audio circuits, are not specifically provided for in item 685.90, TSUS. Instead, the jacks were held properly classified as parts of radio reception apparatus.

The CCPA in *General Electric* also stated in reference to item 685.90, TSUS, "that a seemingly broad descriptive tariff term is not to be taken as encompassing every article which may literally come within that term but rather only those articles of the type intended by Congress * * *". Heading 8537, HTSUSA, is equally as broad as item 685.90, TSUS. While the keyboard in question may literally be involved with the use of electricity, it is not specifically described within either the text or ENs of heading 8537. However, there is no dispute that the keyboard in question is accurately described as a part of a CMT.

Rule 10(ij) is essentially embodied within Section XVI, note 2(a). In this case, we do not agree that the broad descriptive tariff provision of heading 8537, HTSUSA, must prevail over the provision for parts of CMTs. The keyboard in this instance is not specifically provided for within heading 8537, HTSUSA. It is dedicated for use as an integral part of a CMT, and classifiable as such.

The CCPA revisited the rationale of *General Electric* in *United States v. Rembrandt Electronics (Rembrandt)*, 405 F.Supp 588, rev'd 542 F.2d 1154 (1976). The Court reversed the holding of the Customs Court that switches which were designed for specific and sole use with television antennae were classifiable as television apparatus and parts within item 685.20, TSUS. Instead, the Court held that the switches were properly classifiable as electrical switches within item 685.90, TSUS. The Court based its reversal on the fact that the

distinction between "electric power circuits" and "low current audio circuits" emphasized in *General Electric*, and relied upon by the Customs Court, did not exist. *Rembrandt* at 1156. The Court held that item 685.90, TSUS, must apply to merchandise enumerated therein without regard to whether the circuit in which it is used is a power or low-current circuit *Rembrandt* at 1156. However, the Court did not reverse the result reached in *General Electric* because the rationale of the decision was based on the relative specificity of the competing provisions and not the type of circuit involved.

The rationale of *Rembrandt* is not instructive for the resolution of this ruling because the keyboard at issue is not, like the television switches, an item specifically enumerated within the provision for electrical apparatus for making or breaking electric circuits. As stated previously, the keyboard does not satisfy the description of any of the items enumerated within the text or ENs of heading 8537, HTSUSA. Accordingly, the decision reached in *Rembrandt* is inapplicable in this instance.

The Court of International Trade applied the *General Electric* rationale regarding the scope of item 685.90, TSUS, in *Kyocera International, Inc., v. United States (Kyocera)*, 527 F.Supp 337 (1981), aff'd 681 F.2d 796 (1982). *Kyocera* dealt with the classification of certain ceramic articles used in the manufacture of integrated circuits. The court cited verbatim the above discussed language from *General Electric* dealing with the scope of item 685.90, TSUS. The court concluded that the provision for "other electrical apparatus * * * for the protection of electrical circuits or for making connections to or in electrical circuits" within item 685.90, TSUS, was not a specific provision for the subject parts of integrated circuits, and that these parts are properly classifiable as parts of other related electronic crystal components. This conclusion supports the classification of CMT keyboards within the heading for parts of CMTs as opposed to that of "other bases" equipped with two or more apparatus of heading 8536 for electric control or the distribution of electricity.

The Court in *Kyocera* also addressed the applicability of General Interpretative Rule 10(ij). Based on the conclusion that integrated circuit parts were not specifically provided for within item 685.90, TSUS, the Court stated that Rule 10(ij) was inapplicable. The Court stated that "[t]he record establishes, and the defendant concedes, that the imports are parts of other related electronic crystal components." This type of situation also exists in the present case, and lends additional support for the classification of the keyboards at issue within subheading 8529.90.50, HTSUSA.

Congress has indicated that earlier tariff rulings must not be disregarded in applying the HTSUSA. The conference report to the Omnibus Trade Bill of 1988, states that "on a case-by-case basis prior decisions should be considered instructive in interpreting the HTS[USA], particularly where the nomenclature previously interpreted in those decisions remain unchanged and dissimilar interpretation is required by the text of the HTS[USA]." H. Rep. No. 100-576, 100th Cong., 2D Sess. 548 (1988) at 550. In this instance, the nomenclature has remained unchanged and the text of the HTSUSA does not require a dissimilar interpretation. Accordingly, we find the previously discussed decisions regarding the scope of item 685.90, TSUS, to be instructive regarding the interpretation of heading 8537, HTSUSA.

The presumption is that CMT subassemblies are covered by Antidumping Duty Order (A-588-405) unless an importer can prove otherwise. 55 Fed. Reg. 34, 5867 (1990). An importer will have to file a declaration with the Customs Service to the effect that a particular CMT subassembly is not dedicated exclusively for use in CMTs or that the dollar value is less than five dollars, if they wish to be excluded from this order. Counsel on behalf of the importer has filed no such a declaration. Instead, counsel claims that the subject article is not a "subassembly" within the meaning of this order. We refer counsel to the Department of Commerce for the resolution of this issue. Otherwise, the subject article is presumed to be covered by this order.

Holding:

The keyboard at issue is properly classifiable within subheading 8529.90.50, HTSUSA, which provides for other parts suitable for use solely or principally with the apparatus of heading 8525 to 8528 dutiable at the rate of 5.9 percent *ad valorem*.

CMT subassemblies are covered by Antidumping Duty Order A-588-405 unless the importer can prove otherwise. If the importer wishes to be excluded from this order they

must file the appropriate declaration. No such declaration has been filed in this case. Counsel should contact the International Trade Administration at the Department of commerce to resolve this issue.

ARTHUR P. SCHIFFLIN,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, June 20, 1991.

CLA85:S:N:109 863577
Category: Classification
Tariff No. 8517.90.3000

MS. JOAN MCLEOD
NORTHERN TELECOM, INC.
77 Oriskany Drive
Tonawanda, NY 14150

Re: The tariff classification of elastomer from Canada.

DEAR MS. MCLEOD:

In your letter dated May 16, 1991, you requested a tariff classification ruling.

The elastomer is a molded silicone rubber pad with collapsible protrusions or domes. Each dome contains a conductive carbon silicone contact, which provides the bridging when used in PC board switch panels. They can be made with a variety of stroke length, actuation force, tactile feedback shapes, and sizes. The elastomer is custom molded to the customers specifications in a variety of configurations. It is used with the customers key tops, PC board switch panel, and bezel. The elastomer appears to be cut to size ready for assembly into a telephone set.

The applicable subheading for the elastomer will be 8517.90.3000, Harmonized Tariff Schedule of the United States (HTS), which provides for "Parts of telephone sets." The rate of duty will be 8.5 percent *ad valorem*.

Goods classifiable under subheading 8517.90.3000, HTS, which have originated in the territory of Canada, will be entitled to a free rate of duty under the United States-Canada Free Trade Agreement (FTA) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,

Washington, DC, March 11, 1992.

CLA-2 CO:R:C:M 089938 AJ

Category: Classification

Tariff No. 8517.90.30

Ms. JOAN MCLEOD
CUSTOMS SPECIALISTS
NORTHERN TELECOM INC.
77 Oriskany Drive
Tonawanda, NY 14150

Re: Reconsideration NY 863577; elastomer; Heading 8536; Heading 8537; Heading 8546;
Heading 3926; Section XVI, note 2(a); Chapter 39, note 2(o).

DEAR Ms. MCLEOD:

This is in reply to your request of July 16, 1991, for reconsideration of NY 863577 (6/20/91), which classified an elastomer as a part of a telephone set within subheading 8517.90.30, Harmonized Tariff Schedule of the United States (HTSUS).

Facts:

The merchandise under reconsideration is an elastomer which is also referred to as a "Klik Key Rubber Switch". It is made of a silicon rubber pad with collapsible protrusions or domes. Each dome contains a conductive rubber contact which provides the bridging between the keys and the switch board of a telephone.

It is claimed that the elastomer can be used "off the shelf" with numerous electronic devices such as calculators, computers, electronic games and telephone sets. However, the submitted sample appears to be designed for use with a telephone set based upon its size and shape. The submitted literature states that elastomers are custom molded to customer specifications in a variety of configurations. Furthermore, large sheets of domes can be separated into the exact arrangement needed, from a single switch to full-travel keyboards. In addition, the literature states that elastomers can have a variety of stroke length, actuation force, tactile feedback, shapes and sizes. Elastomers used with telephone sets are designed with certain stroke, force and life cycle parameters.

Issue:

Whether the elastomers are properly classifiable within heading 8517, HTSUS, which provides for parts of telephone sets; or classifiable within heading 8536, HTSUS, which provides for "[e]lectrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays * * *"; or classifiable within heading 8537, HTSUS, which provides for "[b]oards, panels * * * and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity * * *"; or classifiable within heading 3926, HTSUS, which provides for other articles of plastic.

Law and Analysis:

Subheading 8517.90.30, HTSUS, provides for parts of telephone sets. It is claimed that elastomers can be used "off the shelf" with numerous electronics devices. However, the subject sample appears to be of the type used solely or principally with telephone sets. This conclusion is supported by the elastomer's size, shape and parameters of operation. The submitted literature states that elastomers are custom molded to customer specifications in a variety of configurations; and that they have a variety of stroke length, actuation force, tactile feedback, shapes, and sizes. In addition, elastomers used with telephone sets are designed with certain stroke, force and life cycle parameters. This information indicates that elastomers are designed and shaped to be used solely or principally with certain devices. In this instance, the subject elastomer is designed and shaped to be used solely or principally with telephone sets. Accordingly, the subject elastomer satisfies the terms of subheading 8517.90.30, HTSUS, and is properly classifiable therein.

Parts which are goods included in any of the headings of chapters 84 and 85 are in all cases to be classified in their respective headings. Section XVI, note 2(a). It is argued that the elastomer is a good included in subheading 8537.10.00, HTSUS, which provides for "switchgear assemblies and switchboards"

Heading 8537, HTSUS, provides for "[b]oards, panels * * * and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity * * * other than switching apparatus of heading 8517". The subject elastomer does not satisfy the terms of this heading. It is used solely or principally with telephone sets. If the elastomer is a switchgear assembly or switchboard, then it is precluded from classification within this heading as a switching apparatus of heading 8517. Accordingly, the subject elastomer is not classifiable within heading 8537, HTSUS.

Heading 8536, HTSUS, provides for electrical apparatus for switching electrical circuits (for example switches). You contend that the elastomer satisfies this description. The subject elastomer does not satisfy the terms of this heading. It is not merely a switch, but a group of bridging devices collected on an insulating membrane. Heading 8537, HTSUS, provides for two or more switches assembled together. Heading 8546, HTSUS, provides for electrical insulators. Therefore, the elastomer is not classifiable within heading 8536, HTSUS.

Heading 8546, HTSUS, provides for electrical insulators of any material. You also contend that the elastomer is classifiable within this heading. However, the subject elastomer does not satisfy the terms of this heading. It is not merely an insulator. It also performs a connection or bridging function. Accordingly, the elastomer is also not classifiable within heading 8546, HTSUS.

Heading 3926, HTSUS, provides for "[o]ther articles of plastics and articles of other materials of headings 3901 to 3914." You contend that the elastomer is classifiable within this heading. Customs laboratory analysis indicates that the elastomer satisfies the terms of this heading. Chapter 39, of which this heading is a part, does not cover articles of Section XVI. Chapter 39, note 2(o). The elastomer satisfies this description. A part of a telephone set is an article of Section XVI. Accordingly, the elastomer is precluded from classification within subheading 3926, HTSUS.

Holding:

The subject elastomer is properly classifiable within subheading 8517.90.30, HTSUS, which provides for parts of telephone sets. NY 863577 is affirmed.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, July 23, 1991.
CLA-2 CO:R:C:M 088964 MBR
Category: Classification
Tariff No. 8517.90.30

MR. J. G. BRADFORD
AT&T, IMPORT SPECIALIST
Guilford Center
P.O. Box 25000
Greensboro, NC 27420-5000

Re: Membrane switch assemblies for multiline telephone sets; Section XVI, Note 2(b); Subheading 8517.90.30; Subheading 8537.10.00; Section XVI 2(a); Explanatory Note 85.37; *United States v. General Electric*; *United States v. Rembrandt Electronics*; *Kyocera International, Inc., v. United States*; H. Rep. No. 100-576;

DEAR MR. BRADFORD:

This is in response to your letter of February 25, 1991, on behalf of AT&T, requesting a tariff classification of "Membrane Switch Assemblies" for multiline telephone sets, imported from Mexico under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which has been referred to this office for a reply.

Facts:

The "Membrane Switch Assemblies" for multiline telephone sets are comprised of four models identified as 3019-104288402, 3042C 4BP-105201990, 3042D-845459197, and III BK IDT 846337632. They usually include two flexible membrane circuits, adhesive paper spacers, plastic graphics, and in some variations, molded plastic housings or backplates. The flexible membranes are clear Melinex plastic that have a carbon ink circuitry printed on them. The switches are assembled in layers and bonded together with the self-contained adhesive of the spacers and graphics. They are varied in size from 2" to 8" in width and 4" to 18" in length including the insertible tails (electrical connectors). These switches are used exclusively in AT&T small multiline telephone systems.

Issue:

Whether the article in question is properly classifiable within subheading 8537.10.00, HTSUSA, which provides for: "[b]oards, panels (including numerical control panels), consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity * * * [f]or a voltage not exceeding 1,000 V"; or within subheading 8517.90.30, HTSUSA, which provides for: "[e]lectrical apparatus for line telephony or telegraphy, including such apparatus for carrier-current line systems; parts thereof: [p] arts: [o]f telephonic apparatus: [o]f telephone sets."

Law and Analysis:

Section XVI, Legal Note 2(b), states that parts if suitable for use solely or principally with a particular kind of machine are to be classified with that machine. Clearly, the membrane switch assemblies at issue are parts suitable for use solely or principally with telephone systems. Multiline telephone sets (including key, call director and consoles) are provided for within subheading 8517.10.00, HTSUSA. However, parts of telephone sets are provided for within subheading 8517.90.30, HTSUSA.

Additionally, Section XVI, Legal Note 2(a), states that parts which are goods included in any of the headings of chapters 84 and 85 are in all cases to be classified in their respective headings. The Membrane Switch Assemblies are *prima facie* classifiable in heading 8537, HTSUSA, which provides for "[b]oards, panels (including numerical control panels), consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity * * * other than switching apparatus of heading 8517." (Emphasis added).

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) to heading 8537, page 1391, state that the merchandise of this heading consists of an assembly of apparatus of the kind referred to in the two preceding headings (e.g., switches and fuses) on a board, panel, console, etc., or mounted in a cabinet, desk, etc. In addition, the ENs state that the goods of this heading vary from small switchboards with only a few switches, fuses etc. (e.g., for lighting installations) to complex control panels for machine tools, rolling mills, power stations, radio stations etc., including assemblies of several of the articles cited in the text of this heading." However, the instant merchandise is not described by the terms of heading 8537, and thus is not properly classifiable therein. See HQ 087362, dated February 19, 1991, which held that a cellular mobile telephone (CMT) keyboard assembly was not properly classifiable in heading 8537, but was classifiable in subheading 8529.90.50, HTSUSA, which provides for other parts suitable for use solely or principally with the apparatus of heading 8525 (i.e., CMTs). See also NY 863577 which classified molded silicon rubber pads used for switching (buttons) in a telephone set in subheading 8517.90.30, HTSUSA.

In *United States v. General Electric Company (General Electric)*, 441 F.2d 1186, 58 CCPA, C.A.D. 1021 (1971), the Court of Customs and Patent Appeals (CCPA) addressed the application of item 685.90, Tariff Schedules of the United States (TSUS). Item 685.90 is the predecessor provision of heading 8537, HTSUSA. The Court considered the applicability of General Interpretative Rule 10(ij) which provides that an article cannot be classified as a "part" if there is a specific provision for the article. The CCPA specifically rejected the argument that the provision of item 685.90, TSUS, for "other electrical apparatus for making or breaking electrical circuits" must prevail over the provision for parts of radio reception apparatus within item 685.22, TSUS. The Court held that the Customs Court was correct in its holding that imported jacks, used in low current audio circuits, are not specifically provided for in item 685.90, TSUS. Instead, the jacks were held properly classified as parts of radio reception apparatus.

The CCPA in *General Electric* also stated in reference to item 685.90, TSUS, "that a seemingly broad descriptive tariff term is not to be taken as encompassing every article which may literally come within that term but rather only those articles of the type intended by Congress * * *." Heading 8537, HTSUSA, is equally as broad as item 685.90, TSUS. While the Membrane Switch Assemblies in question may literally be involved with the use of electricity, they are not specifically described within either the text or ENs of heading 8537. However, there is no dispute that they are accurately described as parts of multiline telephone sets.

The CCPA revisited the rationale of *General Electric* in *United States v. Rembrandt Electronics* (Rembrandt), 405 F.Supp 588, rev'd 542 F.2d 1154 (1976). The Court reversed the holding of the Customs Court that switches which were designed for specific and sole use with television antennae were classifiable as television apparatus and parts within item 685.20, TSUS. Instead, the Court held that the switches were properly classifiable as electrical switches within item 685.90, TSUS. The Court based its reversal on the fact that the distinction between "electric power circuits" and "low current audio circuits" emphasized in *General Electric*, and relied upon by the Customs Court, did not exist. Rembrandt at 1156. The Court held that item 685.90, TSUS, must apply to merchandise enumerated therein without regard to whether the circuit in which it is used is a power or low-current circuit Rembrandt at 1156. However the Court did not reverse the result reached in *General Electric* because the rationale of the decision was based on the relative specificity of the competing provisions and not the type of circuit involved.

The rationale of Rembrandt is not instructive for the resolution of this ruling because the Membrane Switch Assemblies at issue are not, like the television switches, an item specifically enumerated within the provision for electrical apparatus for making or breaking electric circuits. As stated previously, they do not satisfy the description of any of the items enumerated within the text or ENs of heading 8537, HTSUSA. Accordingly, the decision reached in Rembrandt is inapplicable in this instance.

The Court of International Trade applied the *General Electric* rationale regarding the scope of item 685.90, TSUS, in *Kyocera International, Inc., v. United States* (Kyocera), 527 F.Supp 337 (1981), aff'd 681 F.2d 796 (1982). Kyocera dealt with the classification of certain ceramic articles used in the manufacture of integrated circuits. The Court cited verbatim the above discussed language from *General Electric* dealing with the scope of item 685.90, TSUS. The Court concluded that the provision for "other electrical apparatus * * * for the protection of electrical circuits or for making connections to or in electrical circuits" within item 685.90, TSUS, was not a specific provision for the subject parts of integrated circuits, and that these parts are properly classifiable as parts of other related electronic crystal components. This conclusion supports the classification of the instant Membrane Switch Assemblies within the heading for parts of telephone sets, as opposed to the classification of "other bases" equipped with two or more apparatus of heading 8536 for electric control or the distribution of electricity.

The Court in *Kyocera* also addressed the applicability of General Interpretative Rule 10(ij). Based on the conclusion that integrated circuit parts were not specifically provided for within item 685.90, TSUS, the Court stated that Rule 10(ij) was inapplicable. The Court stated that "[t]he record establishes, and the defendant concedes, that the imports are parts of 'other related electronic crystal components'." This type of situation also exists in the present case, and lends additional support for the classification of the Membrane Switch Assemblies at issue within subheading 8517.90.15, HTSUSA.

The conference report to the Omnibus Trade Bill of 1988, states that "on a case-by-case basis prior decisions should be considered instructive in interpreting the HTS[USA], particularly where the nomenclature previously interpreted in those decisions remain unchanged and no dissimilar interpretation is required by the text of the HTS[USA]." H. Rep. No. 100-576, 100th Cong., 2D Sess. 548 (1988) at 550 In this instance, the nomenclature has remained unchanged and the text of the HTSUSA does not require a dissimilar interpretation. Accordingly, we find the previously discussed decisions regarding the scope of item 685.90, TSUS, to be instructive regarding the interpretation of heading 8537, HTSUSA.

Holding:

The AT&T Membrane Switch Assemblies for multiline telephone sets are properly classifiable within subheading 8517.90.30, HTSUSA, which provides for: "[e]lectrical appara-

tus for line telephony or telegraphy, including such apparatus for carrier-current line systems; parts thereof: [p]arts: [o]f telephonic apparatus; [o]f telephone sets." The rate of duty is 8.5 percent *ad valorem*.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:TC:MM 958709 JAS
Category: Classification
Tariff No. 8537.10.90

GEORGE KLEINFELD, ESQ.
PAUL, WEISS, RIFKIND, WHARTON & GARRISON
1615 L Street, N.W.
Washington, DC 20036-5694

Re: HQ 087362 Revoked; keyboard/panel switch for cellular mobile telephone; parts of transmission apparatus for radiotelephony whether or not incorporating reception apparatus, Heading 8529; bases for electric control or the distribution of electricity, Heading 8537, *Nidec Corporation v. U.S.*, Section XVI, Note 2.

DEAR MR. KLEINFELD:

This is in reference to HQ 087362, dated February 19, 1991, in which we replied to your inquiry on behalf of **NEC America, Inc.**, dated May 11, 1990, concerning the tariff classification of a keyboard/panel switch for cellular mobile telephones. In that ruling we confirmed that the merchandise was classifiable in subheading 8529.90.50 (now 99), Harmonized Tariff Schedule of the United States (HTSUS), a provision for other parts suitable for use solely or principally with the apparatus of headings 8525 to 8528. We have reconsidered the matter and determined that this classification is incorrect.

Facts:

As described in HQ 087362, the keyboard/panel switch, also referred to as a keyboard and a keyboard assembly, is comprised of 20 push button type switches, 14 pin type connectors, and 11 metal contacts, all affixed to a printed circuit board. After importation, the article is inserted into the logic board of a cellular mobile telephone (CMT). When a key on the CMT dialpad is depressed the keyboard/panel switch diverts an electrical signal along a certain path so that the logic circuit board assembly recognizes the path. The keyboard/panel switch enables the user to make a telephone call or to avail himself of the other functions of the CMT.

The provisions under consideration are as follows:

8529	Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528:
8529.90	Other:
8529.90.99	Other *** 4.7 percent
8537	Boards, panels (including numerical control panels), consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity ***:
8537.10	For a voltage not exceeding 1,000 V:
8537.10.90	Other *** 4.8 percent

Issue:

Whether the keyboard/panel switch is a good included in heading 8537.

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRI 2 through 6.

The **Harmonized Commodity Description And Coding System Explanatory Notes (ENs)** constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the notes should always be consulted. See T.D. 89-80, 54 Fed Reg. 35127, 35128 (Aug. 23, 1989).

Subject to certain exceptions that are not relevant here, goods that are identifiable as parts of machines or apparatus of Chapter 84 or Chapter 85 are classifiable in accordance with Section XVI, Note 2, HTSUS. **Nidec Corporation v. United States**, 861 F. Supp. 136, *aff'd*, 68 F.3d 1333 (1995). Parts which are goods included in any of the headings of Chapters 84 and 85 are in all cases to be classified in their respective headings. See Note 2(a). Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading, are to be classified with the machines of that kind. See Note 2(b).

As explained on p. 2 of HQ 097362, when the user depresses a key on the CMT keypad, the keyboard/panel switch diverts an electrical signal along a path so that the logic board of the CMT recognizes the key typed. It was concluded that the keyboard/panel switch was not described by the terms of heading 8537. We disagree. Relevant ENs at p. 1391, state that the goods of heading 85.37 consist of an assembly of apparatus of the kind referred to in headings 85.35 and 85.36 (e.g., switches and fuses) on a board, panel, console, etc., or mounted in a cabinet, desk, etc. The keyboard/panel switch in issue contains multiple switches, together with connectors and contacts, and functions by closing an electronic loop that switches an electric signal to the appropriate port on the CMT logic board. It meets the description in heading 8537 as a base for electric control or the distribution of electricity, as required by Section XVI, Note 2(a), HTSUS.

Holding:

Under the authority of GRI 1, the keyboard/panel switch is provided for in heading 8537. It is classifiable in subheading 8537.10.90, HTSUS.

HQ 087362, dated February 19, 1991, is revoked.

JOHN DURANT,
Director,

Tariff Classification Appeals Division.

[ATTACHMENT F]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:TC:MM 958711 JAS
Category: Classification
Tariff No. 8537.10.90

MS. JOAN MCLEOD
NORTHERN TELECOM INC.
77 Oriskany Drive
Tonawanda, NY 14150

Re: NY 863577, HQ 089938 Revoked; elastomer, klik key rubber switch, electrical apparatus for completing electric circuits; switches, Heading 8536; electrical insulators, Heading 8546; bases for electric control or distribution of electricity, Heading 8537, *Nidec Corporation v. U.S.*, Section XVI, Note 2.

DEAR MS. MCLEOD:

In NY 863577, dated June 20, 1991, the Area Director of Customs, New York Seaport, responded to your request of May 16, 1991, and advised you that a molded silicone rubber pad with collapsible protrusions or domes, referred to as an elastomer a Klik Key Rubber Switch, was classifiable in subheading 8517.90.30, Harmonized Tariff Schedule of the United States (HTSUS), as parts of telephone sets. In HQ 089938, issued to you on March 11, 1992, we confirmed the holding in NY 863577. We have reconsidered the matter and determined that this classification is incorrect.

Facts:

The elastomer or Klik Key Rubber Switch, is described in HQ 089938 as a silicone rubber pad with collapsible protrusions or domes. The rubber acts as an insulating material while the domes contain conductive rubber contacts and function as individual switches that move under finger pressure to complete an electrical circuit between the keys and the switch board of a telephone. An examination of a sample submitted in connection with the request for reconsideration indicated it was designed for use with telephone sets.

The provisions under consideration are as follows:

8517	Electrical apparatus for line telephony or telegraphy, including such apparatus for carrier-current line systems; parts thereof:
8517.90	Parts:
	Other parts, incorporating printed circuit assemblies:
8517.90.12	Parts for telephone sets * * * 8.5 percent
8537	Boards, panels (including numerical control panels), consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity * *
8537.10	For a voltage not exceeding 1,000 V:
8537.10.90	Other * * * 4.8 percent

Issue:

Whether the elastomer is a good included in heading 8537.

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The **Harmonized Commodity Description And Coding System Explanatory Notes (ENs)** constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the **ENs** provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the notes should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Subject to certain exceptions that are not relevant here, goods that are identifiable parts of machines or apparatus of Chapter 84 or Chapter 85 are classifiable in accordance with Section XVI, Note 2, HTSUS. **Nidec Corporation v. United States**, 861 F. Supp. 136, *aff'd*, 68 F.3d 1333 (1995). Parts which are goods included in any of the headings of Chapters 84 and 85 are in all cases to be classified in their respective headings. See Note 2(a). Other parts, if suitable for use solely or principally with a particular machine, or with a number of machines of the same heading, are to be classified with the machines of that kind. See Note 2(b).

It was stated on p. 3 of HQ 089938 that the subject elastomer does not satisfy the terms of heading 8537. It is used solely or principally with telephone sets. While we agree with the second statement, we disagree that the elastomer is not a good included in heading 8537. Relevant **ENs** at p. 1391, state that the goods of heading 85.37 consist of an assembly of apparatus of the kind referred to in headings 85.35 and 85.36 (e.g., switches and fuses) on a board, panel, console, etc., or mounted in a cabinet, desk, etc., for electric control or distribution of electricity. The elastomer in issue consists of collapsible protrusions or domes

on a rubber pad, each dome constituting a switch, and each containing a conductive rubber contact. The elastomer meets the description in heading 8537 as a base equipped with two or more apparatus of headings 8535 or 8536 (i.e., switches) for electric control or the distribution of electricity, as required by Section XVI, Note 2(a), HTSUS.

Holding:

Under the authority of GRI 1, the elastomer or Kilk Key Rubber Switch is provided for in heading 8537. It is classifiable in subheading 8537.10.90, HTSUS.

NY 863577, dated June 20, 1991, and HQ 089938, dated March 11, 1992, are revoked.

JOHN DURANT,

Director,

Tariff Classification Appeals Division.

[ATTACHMENT G]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,

Washington, DC.

CLA-2 RR:TC:MM 958708 JAS

Category: Classification

Tariff No. 8537.10.90

MR. J. G. BRADFORD

AT&T

Guilford Center, P.O. Box 2500

Greensboro, NC 27420-5000

Re: HQ 088964 Revoked; membrane switch assembly, keypad with two flexible membrane circuits having carbon ink circuitry printed on them, paper spacers and plastic graphics; parts of electrical apparatus for line telephony or telegraphy, Heading 8517; touch operated switch for making/breaking electric contact in multiline telephone systems, *Nidec Corporation v. U.S.*, Section XVI, Note 2.

DEAR MR. BRADFORD:

In HQ 088964, dated July 23, 1991, we responded to your letter of February 25, 1991, and advised that a membrane switch assembly for multiline telephone sets was classifiable in subheading 8517.90.30, Harmonized Tariff Schedule of the United States (HTSUS), as parts of electrical apparatus for line telephony or telegraphy, telephone sets. We have reconsidered the matter and determined that this classification is incorrect.

Facts:

Switch assemblies come in various configurations and are often used with printed circuit boards to connect circuits in telephones, computer keyboards, calculators, and children's games. The membrane switch assembly which is the subject of this inquiry is described in HQ 088964 as usually including two flexible membrane circuits, adhesive paper spacers, plastic graphics, and in some variations, molded plastic housings or backplates. The flexible membranes have a carbon ink circuitry printed on them. The switches are assembled in layers and bonded with the self-contained adhesive of the spacers and graphics. The switches vary in size from 2 inches to 8 inches in width and from 4 inches to 18 inches in length, including insertible tails (electrical connectors).

The provisions under consideration are as follows:

8517	Electrical apparatus for line telephony or telegraphy, including such apparatus for carrier-current line systems; parts thereof:
8517.90	Parts:
	Other parts, incorporating printed circuit assemblies:
8517.90.12	Parts for telephone sets * * * 8.5 percent
* *	* *

- 8537** Boards, panels (including numerical control panels), consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8533 or 8536, for electric control or the distribution of electricity * * *:
- 8537.10** For a voltage not exceeding 1,000 V:
- 8537.10.90** Other * * * 4.8 percent

Issue:

Whether the membrane switch assembly is a good included in heading 8537.

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRI). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The **Harmonized Commodity Description And Coding System Explanatory Notes (ENs)** constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the notes should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Subject to certain exceptions that are not relevant here, goods that are identifiable parts of machines or apparatus of Chapter 84 or Chapter 85 are classifiable in accordance with Section XVI, Note 2, HTSUS. **Nidec Corporation v. United States**, 861 F. Supp. 136, *aff'd*, 68 F.3d 1333 (1995). Parts which are goods included in any of the headings of Chapters 84 and 85 are in all cases to be classified in their respective headings. See Note 2(a). Other parts, if suitable for use solely or principally with a particular machine, or with a number of machines of the same heading, are to be classified with the machines of that kind. See Note 2(b).

HQ 088964 cited with approval *United States v. General Electric Company*, 441 F.2d 1186, 58 CCPA 152, C.A.D. 1021 (1971). This case, decided under the HTSUS predecessor tariff code, the Tariff Schedules of the United States (TSUS), held that item 685.90, TSUS—the predecessor provision of heading 8537—was not a “specific” provision for purposes of General Interpretative Rule 10(ij), TSUS Under Rule 10(ij), a parts provision shall not prevail over a specific provision. This case was believed to be instructive in interpreting the provisions of heading 8537. Initially, we note that the phraseology of item 685.90 and that of heading 8537 are similar but not identical, so that whether *General Electric* is instructive as to the scope of heading 8537 is unclear. Moreover, Section XVI, Note 2(a) does not require that a heading of Chapter 84 or Chapter 85 be specific; the heading need merely include the good in issue. It is our opinion that the switch membrane assembly is a good included in heading 8537. The use of dial keypads or function keys for telephone sets, goods substantially similar to the membrane switch assembly in issue, involves depressing a key on a keypad to divert an electrical signal so that a printed wiring board (PWB) in the telephone recognizes the key typed. This essentially joins two ends of the electrical path on the PWB, completing an electrical circuit.

Relevant ENs at p. 1391, state that the goods of heading 85.37 consist of an assembly of apparatus of the kind referred to in headings 85.35 and 85.36 (e.g., switches and fuses) on a board, panel, console, etc., or mounted in a cabinet, desk, etc., for electric control or distribution of electricity. The membrane switch assembly in issue consists of individual switches bonded together in layers. It meets the description in heading 8537 as a base equipped with two or more apparatus of headings 8535 or 8536 (i.e., switches) for electric control or the distribution of electricity, as required by Section XVI, Note 2(a), HTSUS.

Holding:

Under the authority of GRI 1, the membrane switch assembly is provided for in heading 8537. It is classifiable in subheading 8537.10.90, HTSUS.

HQ 088964, dated July 23, 1991, is revoked.

JOHN DURANT,
Director,
Tariff Classification Appeals Division.

PROPOSED REVOCATION OF RULING LETTERS RELATING TO TARIFF CLASSIFICATION OF HEAT RECOVERY VENTILATORS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letters.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke two rulings relating to the tariff classification of heat recovery ventilators. These articles consist of a heat recovery core or heat exchanger, a motor driven fan or fans, and a dehumidistat. Customs invites comments on the correctness of the proposed revocations.

DATE: Comments must be received on or before February 2, 1996.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Tariff Classification Appeals Division, 1301 Constitution Avenue, N.W. (Franklin Court), Washington, D.C. 20229. Submitted comments may be inspected at the Tariff Classification Appeals Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th. Street, N.W. Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Tariff Classification Appeals Division (202) 482-7030.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke two rulings relating to the tariff classification of heat recovery ventilators. Customs invites comments on the correctness of the proposed revocations.

In NY 882222, dated February 24, 1992, and NY 881844, dated February 4, 1993, machines consisting of a heat exchanger, motor driven fans, and a humidistat, were held to be classifiable in the provision for air conditioning machines, in subheading 8415.83.00, Harmonized Tariff Schedule of the United States (HTSUS). These rulings were based on the belief that the apparatus changed both the temperature and humidity of the air. NY 881844 is set forth as "Attachment A" to this document. NY 882222 is set forth as "Attachment B" to this document.

It is now Customs position that heat recovery ventilators do not function by changing the temperature and humidity of air. They replace a

given volume of stale air in a room with an equal volume of fresh air, with any change in temperature that may occur being incidental.

Customs intends to revoke NY 881844 and NY 882222 to reflect the proper classification of heat recovery ventilators under subheading 8479.89.65, HTSUS, as machines and mechanical appliances having individual functions, not specified or included elsewhere in [chapter 84]. Before taking this action, we will give consideration to any written comments timely received. Proposed HQ 958729 revoking NY 882222 is set forth as "Attachment C" to this document. Proposed HQ 958730 revoking NY 881844 is set forth as "Attachment D" to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: December 15, 1995.

MARVIN M. AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,
New York, NY, February 4, 1993.

CLA-2-84:S:NN:N2:105 8811844
Category: Classification
Tariff No.: 8415.83.0070

MR. ED BAKER
A.N. DERINGER, INC.
30 West Service Road
Champlain, NY 12919-9703

Re: The tariff classification of heat recovery ventilators from Canada.

DEAR MR. BAKER:

In your letter dated January 7, 1993, you requested a tariff classification ruling on behalf of Venmar Ventilation.

Flair Heat Recovery Ventilators, models 3955, 5585 and 85115 vary in air volume they can handle, but all have the same principle of operation: heat exchange. Warm: stale and humid air throughout a house is drawn by the intake fan of the unit through an existing duct system. As stale air is expelled, the heat recovery ventilator simultaneously draws in fresh air from the outside, warming it with heat recovered from the indoor air. Fresh, warm air is thus released throughout the house. All models include fillers which trap dust particles.

All models also include dehumidistats which sense and regulate humidity by controlling the speed of the fans and the resulting air mix. Excess humidity condenses on the polypropylene core and collects in the compensation tray.

The applicable subheading for all the Flair Heat Recovery Ventilators listed above will be 8415.83.0070, Harmonized Tariff Schedule of the United States (HTS), which provides for air conditioning machines, comprising a motor-driven fan and elements for changing the

temperature and humidity, including these machines in which the humidity cannot be separately regulated, other, not incorporating a refrigerating unit. The rate of duty will be 2.2 percent *ad valorem*.

Goods classifiable under subheading 8415.83.0070, HTS, which have originated in the territory of Canada, will be entitled to a free rate of duty under the United States-Canada Free Trade Agreement (FTA) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter, should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, February 24, 1992.

CLA84:S:N:N1:105 882222
Category: Classification
Tariff No.: 8415.83.0070

MR. WILLIAM H. STEERE
CARRIER CORPORATION
P.O. Box 4800
Syracuse, NY 13221

Re: The tariff classification of heat recovery ventilators from Canada.

DEAR MR. STEERE:

In your letter dated January 28, 1993 you requested a tariff classification ruling.

You enclosed data sheets on three heat recovery ventilators: VA3A, VB5A and VC5A. Heat recovery ventilators are basically heat exchangers that transfer heat from warm, stale and humid air that is about to be expelled from a home to fresh, cold air being drawn from the outside to replace it. The heat recovery core is made of polypropylene. Within the core are two motor-driven fans that control the two air flows. A dehumidistat control allows the user to select the relative humidity level at which the unit would change speed for dehumidification in the winter months. A condensate tray with drain is positioned just below the heat recovery core. A filter installed on the incoming outdoor air stream removes large airborne particles from the intake air stream.

The applicable subheading for the VA3A, VB5A and VC5A Heat Recovery Ventilators will be 8415.83.0070, Harmonized Tariff Schedule of the United States (HTS), which provides for air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity can not be separately regulated, other, not incorporating a refrigerating unit. The rate of duty will be 2.2 percent *ad valorem*. Goods classifiable under subheading 8415.83.0070 HTS, which have originated in the territory of Canada, will be entitled to a free rate of duty under the United States-Canada Free Trade Agreement (FTA) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE.

Washington, DC.

CLA-2 RR:TC:MM 958729 JAS

Category: Classification

Tariff No.: 8479.89.65

MR. WILLIAM H. STEERE
CARRIER CORPORATION
P.O. Box 4800
Syracuse, NY 13221

Re: NY 882222 revoked; heat recovery ventilator, apparatus for replacing stale air, heat exchanger, motor-driven fan or blower and dehumidistat; air conditioning machine, heading 8415; machine having individual function not specified or included elsewhere.

DEAR MR. STEERE:

In NY 882222, dated February 24, 1992, the Area Director of Customs, New York Sea-port, advised you that three heat recovery ventilator models were classifiable as air conditioning machines, in subheading 8415.83.00, Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered this classification and determined that it is incorrect.

Facts:

As described in NY 882222, the heat recovery ventilator models VA3A, VB5A and VC5A, consist of a polypropylene heat recovery core or heat exchanger that incorporates 2 motor-driven fans, a filter, and a dehumidistat control that allows the user to select the relative humidity level. This is domestic apparatus that functions in connection with existing heating or air conditioning ductwork to evacuate stale air from a room and replace it with the same volume of fresh air. Heat from the exiting air is transferred to the heat exchanger. Simultaneously, fresh air drawn in from the outside passes through the filter to remove large airborne particles, then over the heat exchanger where it absorbs the same heat.

The provisions under consideration are as follows:

8414	Air or vacuum pumps, air or other gas compressors and fans; * * *:
	Fans:
8414.59	Other:
8414.59.60	Other * * * 4.2 percent
8415	Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated; parts thereof:
	Other, except parts:
8415.83.00	Not incorporating a refrigerating unit * * * 2 percent
8421	* * *; filtering or purifying machinery and apparatus for liquids or gases; parts thereof:
	Filtering and purifying machinery and apparatus for gases.
8421.39	Other:
8421.39.80	Other * * * 3.1 percent
8479	Machines and mechanical appliances having individual functions, not specified or included elsewhere in [chapter 84]; parts thereof:
	Other machines and mechanical appliances:
8479.89	Other:
8479.89.95	Other * * * 3.5 percent

Issue:

Whether heat recovery ventilators are air conditioning machines of heading 8415; whether they are provided for more specifically in any other heading of chapter 84 or 85.

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (RIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to RIs 2 through 6.

The **Harmonized Commodity Description And Coding System Explanatory Notes (ENs)** constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the notes should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Relevant ENs at p. 1163 state that fans of heading 84.14, whether or not fitted with motors, are designed either for delivering large volumes of air or other gases at relatively low temperatures or merely for creating a movement of surrounding air. The heading, however, excludes fans fitted with elements additional to their motors or housing (such as large dust separating cones, filters, cooling or heating elements and heat exchangers) if such elements give them the characteristics of more complex machines of other headings. These notes exclude the subject heat recovery ventilators.

Other ENs at pp. 1164 and 1165 state that heading 84.15 covers certain apparatus for maintaining required conditions of temperature and humidity in closed spaces. Machines of heading 84.15 must be equipped with a motor-driven fan or blower, and change both the temperature (a heating or cooling element or both) and the humidity (a humidifying or drying element or both) of air, these elements being presented together. The machines in issue do not change the temperature in a room. The heat exchanger maintains existing room temperature while the air is being changed. The temperature of air entering the room may initially be lower until the heat is transferred, but this is incidental. The heat recovery ventilators are not air conditioning machines of heading 84.15.

ENs at pp. 1181 and 1182 state that heading 84.21 covers filters and purifiers of all types. Filtering and purifying machinery for gases separate solid or liquid particles from gases, either to recover products of value, or to eliminate harmful materials. The heat recovery ventilators contain a filter but they are not principally used to filter or purify. This precludes heading 84.21 from consideration.

Finally, ENs at p. 1314 state that machines and mechanical appliances of heading 84.79 are those having individual functions which are not covered more specifically by any other heading in the HTSUS, and which cannot be classified in any other particular heading of the HTSUS since no other heading covers it by reference to its method of functioning, description or type, and no other heading covers it by its reference to its use or to the industry in which it is employed, or because it is a general purpose machine. The heat recovery ventilators in issue meet the description of machines of heading 84.79.

Holding:

The heat recovery ventilator models VA3A, VB5A and VC5A are provided for in heading 8479. They are classifiable in subheading 8479.89.65, HTSUS.

NY 802222, dated February 24, 1992, is revoked.

JOHN DURANT,

Director,

Tariff Classification Appeals Division.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,

Washington, DC.

CLA-2 RR:TC:MM 958730 JAS

Category: Classification

Tariff No.: 8479.89.65

MR. ED BAKER

A.N. DERINGER, INC.

30 West Service Road

Champlain, NY 12919-9703

Re: NY 881844 revoked; heat recovery ventilator, apparatus for replacing stale air, heat exchanger, motor-driven fan or blower and dehumidistat; air conditioning machine, heading 8415; machine having individual function not specified or included elsewhere.

DEAR MR. BAKER:

In NY 881844, dated February 4, 1993, the Area Director of Customs, New York Seaport, responded to your inquiry of January 7, 1993, on behalf of **Venmar Ventilation, Inc.**, and advised you that three models of the Flair Heat Recovery Ventilator were classifiable as air conditioning machines, in subheading 8415.83.00, Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered this classification and determined that it is incorrect.

Facts:

As described in NY 881844, the Flair Heat Recovery Ventilator models 3055, 5585 and 85115, consist of a polypropylene heat recovery core or heat exchanger that incorporates 2 motor-driven fans, a filter, and a dehumidistat control that allows the user to select the relative humidity level. This is domestic apparatus that functions in connection with existing heating or air conditioning ductwork to evacuate stale air from a room and replace it with the same volume of fresh air. Heat from the exiting air is transferred to the heat exchanger. Simultaneously, fresh air drawn in from the outside passes through the filter to remove large airborne particles, then over the heat exchanger where it absorbs the same heat.

The provisions under consideration are as follows:

8414	Air or vacuum pumps, air or other gas compressors and fans; * * *:
	Fans:
8414.59	Other:
8414.59.60	Other * * * 4.2 percent
*	*
8415	Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated; parts thereof:
	Other, except parts:
8415.83.00	Not incorporating a refrigerating unit * * * 2 percent
*	*
8421	* * *, filtering or purifying machinery and apparatus for liquids or gases; parts thereof:
	Filtering and purifying machinery and apparatus for gases:
8421.39	Other:
8421.39.80	Other * * * 3.1 percent
*	*
8479	Machines and mechanical appliances having individual functions, not specified or included elsewhere in [chapter 84]; parts thereof:
	Other machines and mechanical appliances:
8479.89	Other:
8479.89.95	Other * * * 3.5 percent

Issue:

Whether heat recovery ventilators are air conditioning machines of heading 8415; whether they are provided for more specifically in any other heading of chapter 84 or 85.

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (RIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to RIs 2 through 6.

The **Harmonized Commodity Description And Coding System Explanatory Notes (ENs)** constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the **ENs** provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the notes should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Relevant **ENs** at p. 1163 state that fans of heading 84.14, whether or not fitted with motors, are designed either for delivering large volumes of air or other gases at relatively low temperatures or merely for creating a movement of surrounding air. The heading, however, excludes fans fitted with elements additional to their motors or housing (such as large dust separating cones, filters, cooling or heating elements and heat exchangers) if such elements give them the characteristics of more complex machines of other headings. These notes exclude the subject heat recovery ventilators.

Other **ENs** at pp. 1164 and 1165 state that heading 84.15 covers certain apparatus for maintaining required conditions of temperature and humidity in closed spaces. Machines of heading 84.15 must be equipped with a motor-driven fan or blower, and change both the temperature (a heating or cooling element or both) and the humidity (a humidifying or drying element or both) of air, these elements being presented together. The machines in issue do not change the temperature in a room. The heat exchanger maintains existing room temperature while the air is being changed. The temperature of air entering the room may initially be lower until the heat is transferred, but this is incidental. The heat recovery ventilators are not air conditioning machines of heading 84.15.

ENs at pp. 1181 and 1182 state that heading 84.21 covers filters and purifiers of all types. Filtering and purifying machinery for gases separate solid or liquid particles from gases, either to recover products of value, or to eliminate harmful materials. The heat recovery ventilators contain a filter but they are not principally used to filter or purify. This precludes heading 84.21 from consideration.

Finally, **ENs** at p. 1314 state that machines and mechanical appliances of heading 84.79 are those having individual functions which are not covered more specifically by any other heading in the HTSUS, and which cannot be classified in any other particular heading of the HTSUS since no other heading covers it by reference to its method of functioning, description or type, and no other heading covers it by its reference to its use or to the industry in which it is employed, or because it is a general purpose machine. The heat recovery ventilators in issue meet the description of machines of heading 84.79.

Holding:

The Flair heat recovery ventilator models 3055, 5585 and 85115 are provided for in heading 8479. They are classifiable in subheading 8479.89.65, HTSUS.

NY 881844, dated February 4, 1993, is revoked.

JOHN DURANT,

Director,

Tariff Classification Appeals Division.

**PROPOSED REVOCATION OF CUSTOMS RULING LETTER
RELATING TO TARIFF CLASSIFICATION OF ALUMINUM
HALL STRUCTURAL UNITS**

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 [19 U.S.C. 1825(c)(1)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of "Aluminum Hall" structural units. Comments are invited on the correctness of the proposed ruling.

DATE: Comments must be received on or before February 2, 1996.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Tariff Classification Appeals Division, 1301 Constitution Avenue, NW, (Franklin Court), Washington, DC 20229. Comments submitted may be inspected at the Tariff Classification Appeals Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th Street, NW, Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Altneu, Attorney-Advisor, Tariff Classification Appeals Division (202) 482-7030.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 [19 U.S.C. 1625(c)(1)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of "Aluminum Hall" structural units.

In NY 811376, issued on June 27, 1995, by the Area Director of Customs, New York Seaport, "Aluminum Hall" structural units were classified under subheading 7610.90.00, Harmonized Tariff Schedule of the United States (HTSUS), which provides for: "[a]lluminum structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge sections, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, balustrades, pillars and columns); aluminum plates, rods, profiles, tubes and the like, prepared for use in structures: [o]ther * * *." NY 811376 is set forth in "Attachment A" to this document.

Subsequent information has been provided indicating that the "Aluminum Hall" structural units meet the definition of "prefabricated buildings". Customs is of the opinion that the merchandise is classifiable under subheading 9406.00.80, HTSUS, which provides for other prefabricated buildings.

Customs intends to revoke NY 811376 to reflect the proper classification of the "Aluminum Hall" structural units under subheading 9406.00.80, HTSUS. Before taking this action, consideration will be given to any written comments timely received. Proposed Headquarters 958745 revoking NY 811376 is set forth in "Attachment B" to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: December 18, 1995.

MARVIN M. AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, June 27, 1995.

CLA-2-76:S:N:N1: 112 811376
Category: Classification
Tariff No.: 7610.90.0080

MR. CHARLES BALLANTYNE
UNIVERSAL FABRIC STRUCTURES
4259 East Landis Street
Coopersburg, PA 18036

Re: The tariff classification of "Aluminum Hall" structural units from Belgium.

DEAR MR. BALLANTYNE:

In your letter dated June 7, 1996 you requested a tariff classification ruling.

As indicated in the descriptive literature, the "Aluminum Hall" structural units are constructed from anodized aluminum beams integrally connected to a PVC coated polyester membrane roof, with walls of either fabric or hard fiberglass panels. The representative sample which you furnished with your request contains the fiberglass panels. Each unit is 16 feet long, and units are available in widths ranging from 16 feet to 132 feet, depending upon need. Units can be joined together to obtain whatever length is desired.

The applicable subheading for the "Aluminum Hall" structural units will be 7610.90.0080, Harmonized Tariff Schedule of the United States (HTS), which provides for aluminum structures. The rate of duty will be 5.7 percent *ad valorem*.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,

Area Director,
New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:TC:MM 958745RFA
Category: Classification
Tariff No.: 9406.00.80

MR. CHARLES BALLANTYNE
UNIVERSAL FABRIC STRUCTURES
4259 East Landis Street
Coopersburg, PA 18036

Re: "Aluminum Hall" coated fabric/aluminum structures; fabricated buildings; tents; Headings 6306 and 9406; Legal Note 4 to Chapter 94; Legal Note 1(h) to section XI; Headings 6306, 7610; 9406; EN 63.06, 94.06; NY 897884; NY 811376, revoked.

DEAR MR. BALLANTYNE:

This is in reference to NY 811376 issued to you on June 27, 1995, by the Area Director of Customs, New York Seaport, concerning the tariff classification of an "Aluminum Hall" under the Harmonized Tariff Schedule of the United States (HTSUS). In the course of ruling on similar merchandise, we have determined that NY 811376 is incorrect.

Facts:

The provided literature describes the subject merchandise, "Aluminum Hall" structures, as pre-engineered, freespan, modular fabric tension structures that are designed to withstand high winds, shed snow, and provide durable, safe, and economical temporary shelter where speed of installation or relocation is essential. The structural frame (which accounts for approximately 80 percent of the total cost) is composed of extruded aluminum box beams with an integrated channel system. The roofing membrane is composed of a polyester fabric that is visibly coated on both sides with polyvinyl chloride (PVC). The roofing membrane is inserted in the integrated channel system and tensioned between each frame. The sidewalls of the structures are typically manufactured of rigid panels (said to be composed of fiberglass) that measure approximately 3 feet in width by 9 feet in height.

The combined components form units measuring 16 feet in length and from 16 to 132 feet in width, depending upon need. Units may be joined together to form structures of whatever size desired. The structures are freestanding (without internal columns or ropes) and capable of supporting heavy appliances (e.g., lighting, sprinklers, etc.). A sample swatch of the PVC-coated polyester roofing membrane, and sample sections of the aluminum frame and sidewall panel were submitted. The panel sample is actually composed of fiberglass-reinforced plastic resin that is molded to shape.

Issue:

Whether the merchandise is classifiable under heading 7610, as aluminum structures, or under heading 9406, HTSUS, as prefabricated buildings, or under heading 6306, HTSUS, as tents?

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes.

In NY 811376, issued on June 27, 1995, by the Area Director of Customs, New York Sea-port, "Aluminum Hall" structural units were classified under subheading 7610.90.00, Harmonized Tariff Schedule of the United States (HTSUS), which provides for: "[a]luminum structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge-sections, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, balustrades, pillars and columns); aluminum plates, rods, profiles, tubes and the like, prepared for use in structures: [o]ther * * *."

However, to be classified under heading 7610, HTSUS, an article cannot be classifiable under heading 9406, HTSUS, as a prefabricated building. Legal Note 4 to chapter 94, HTSUS, states that: "For the purposes of heading 9406, the expression '*prefabricated buildings*' means buildings which are finished in the factory or put up as elements, entered together, to be assembled on site, such as housing or worksite accommodation, offices, schools, shops, sheds, garages or similar buildings."

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the HTSUS. While not legally binding or dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 8980, 54 FR 35127, 35128 (August 23, 1989). EN 94.06, at page 1582, states, in pertinent part, that:

This heading covers prefabricated buildings, also known as "industrialised buildings", of **all materials**. (emphasis added)

These buildings, which can be designed for a variety of uses, such as housing, worksite accommodation, offices, schools, shops, sheds, garages and greenhouses, are generally presented in the form of:

- complete buildings, fully assembled, ready for use;
- complete buildings, unassembled;
- incomplete buildings, whether or not assembled, having the essential character of prefabricated buildings.

In NY 897884, issued on June 8, 1994, Customs classified a filtration center/pool shed and an octagon shaped pavilion as prefabricated buildings in subheading 9406.00.80, HTSUS. The shed classified in that ruling was described as a small building equipped with a door, a lock, windows, and four walls and a roof made of hard durable PVC. The pavilion was described as having a roof made completely of PVC material and the walls and door consisting of PVC frames with screen.

We believe that the "Aluminum Hall" meets the definition of "prefabricated buildings". This provision allows for structures made of any material to be classified here so long as it can be used as one of the types of buildings listed in Legal Note 4 to chapter 94, HTSUS, or in EN 94.06. According to the provided literature, the "Aluminum Hall" are pre-engineered, freestanding, modular fabric tension structures that are designed to withstand high winds, shed snow, and provide durable, safe, and economical temporary shelter where speed of installation or relocation is essential. The fact that the roof of the subject merchandise is not made of a hard substance is not relevant for classification purposes so long as it is capable of providing cover from the elements of the weather. Because the "Aluminum Hall" meets the definition of "prefabricated buildings", we find it is precluded from classification under heading 7610, HTSUS, and is properly classifiable in heading 9406, HTSUS. See NYRL 897884.

Because the "Aluminum Hall" uses a type of fabric in its roof or walls, classification under heading 6306, HTSUS, which covers tents, was considered. The EN to heading 6306, page 867, indicates that tents are shelters of fabric (usually with a roof and sides or walls that permit the formation of an enclosure) and that the heading covers tents of various sizes, shapes, and uses, whether or not coated or laminated, and whether or not presented with poles, pegs, ropes, or other accessories. Chapter 63 falls within section XI, HTSUS, which covers textiles and textile articles. Legal Note 1(h) to section XI, HTSUS, states that "This section does not cover: Woven, knitted or crocheted fabrics, felt or nonwovens, impregnated, coated, covered or laminated with plastics, or articles thereof, of chapter 39." Because the roofing membrane of the "Aluminum Hall" structures is composed of polyester fabric that is visibly coated on both sides with PVC, a plastic classifiable in chapter 39, HTSUS, the structures are excluded from heading 6306, HTSUS, and are not classifiable as tents.

Holding:

The articles identified as "Aluminum Hall" structures are properly classified in sub-heading 9406.00.80, HTSUS, which provides for: "Prefabricated buildings: (o)ther * * *." Goods classifiable under this provision have a general, column one rate of duty of 5.7 percent *ad valorem*.

Effect on Other Rulings:

NY 811376, issued on June 27, 1995, is revoked.

JOHN DURANT,

Director,

Tariff Classification Appeals Division.



U.S. Customs Service

Proposed Rulemaking

19 CFR Part 134

RIN 1515-AB82

COUNTRY OF ORIGIN MARKING

AGENCY: U. S. Customs Service, Department of the Treasury.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On November 16, 1995, Customs published in the Federal Register a document which proposed to amend the Customs Regulations to ease the requirement that whenever words appear on an imported article indicating the name of a geographic location other than the true country of origin of the article, the country of origin marking always must appear in close proximity to those words. Comments were to be received on or before January 16, 1996. This document extends for an additional 30 days the period of time within which interested members of the public may submit comments on the proposed amendments.

DATES: Comments must be received on or before February 15, 1996.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, U. S. Customs Service, Franklin Court, 1301 Constitution Avenue, N.W., Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, Franklin Court, 1099 14th Street, N. W., Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Anthony Tonucci, Office of Regulations and Rulings, 202-482-6980.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On November 16, 1995, Customs published in the Federal Register (60 FR 57559) a notice of proposed rulemaking which set forth proposed amendments to part 134 of the Customs Regulations (19 CFR Part 134) regarding country of origin marking. The document proposed

to ease the requirement that whenever words appear on an imported article indicating the name of a geographic location other than the true country of origin of the article, the country of origin marking always must appear in close proximity to those words. The document solicited public comments that were to be received on or before January 16, 1996.

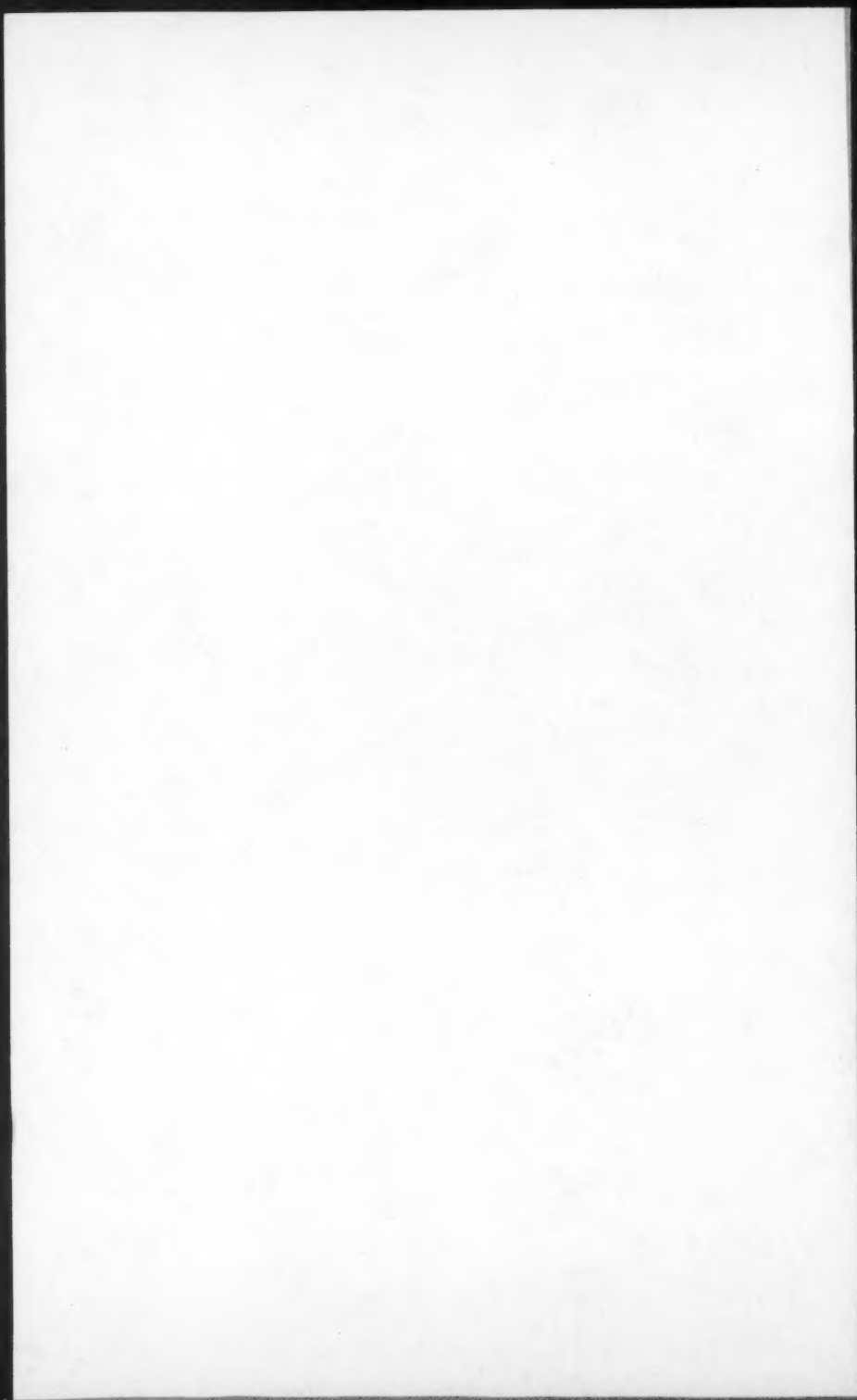
Customs has been requested to extend the period of time for comments in order to afford interested parties additional time to study the proposed regulatory changes and prepare responsive comments. Customs believes that it would be appropriate to grant the request. Accordingly, the period of time for the submission of comments is being extended 30 days.

Dated: December 20, 1995.

STUART P. SEIDEL,
*Assistant Commissioner,
Office of Regulations and Rulings.*

[Published in the Federal Register, December 27, 1995 (60 FR 66952)]





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